



U.S. Department of the Interior

Bureau of Land Management
Arizona State Office
Tucson Field Office

May 2000

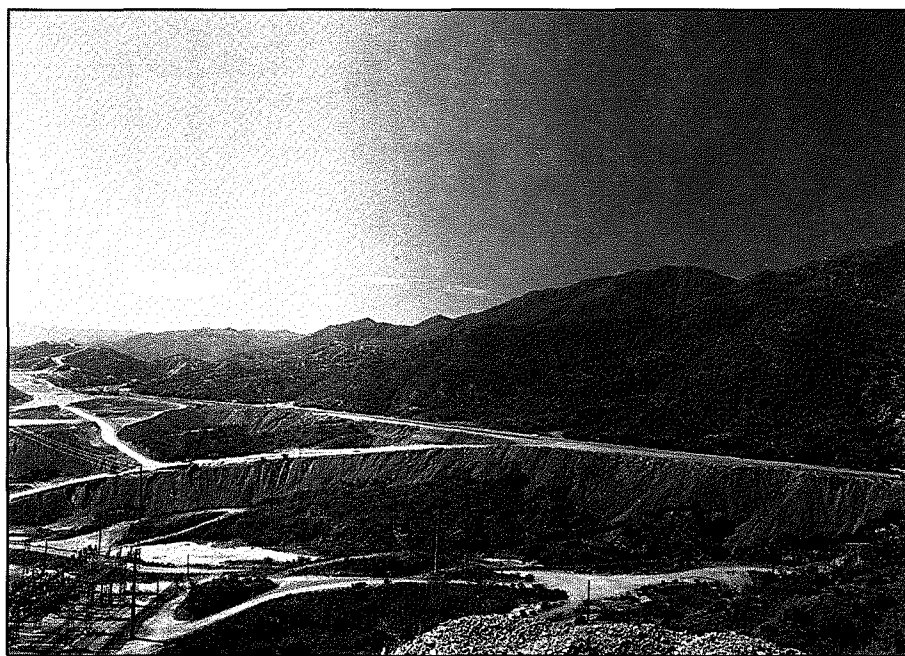


Record of Decision Environmental Impact Statement Ray Land Exchange/Plan Amendment



OFFERED LANDS

Big Sandy River on the Tomlin #4 Parcel, one of the lands offered to the public under the proposed land exchange.



SELECTED LANDS

Overlooking RM-17, (just west of the Ray Mine), a parcel selected by Asarco under the proposed land exchange.



In reply refer to:

BUREAU OF LAND MANAGEMENT

Tucson Field Office

12661 East Broadway

Tucson, AZ 85748-7208
(520) 722-4289

April 27, 2000

AZA31116 (supercedes 28350)
2200 (AZ917/060)

Dear Reader:

Enclosed you will find the Bureau of Land Management (BLM) decisions for the Ray Land Plan Amendment and Ray Land Exchange. The enclosed document combines the Record of Decision (ROD) for the plan amendment with the Notice of Decision (NOD) for the exchange proposal. The land exchange proposal from Asarco Incorporated, has been analyzed in an environmental impact statement (June 1999). The land exchange decision reflects that analysis along with public comments and is in compliance with the exchange regulations and other laws that BLM must follow.

A Notice of Availability for the ROD/NOD is being published in the *Federal Register*, anticipated for May 15, 2000. A NOD for the land exchange will also be published in area newspapers in accordance with the exchange regulations 43 CFR 2201.7-1. The same regulations permit **protests** to be filed on the land exchange decision for a **period of 45 days**. Protests must be received at the following address by close of business no later than 45 days from publication of the Notice of Availability/Notice of Decision in the *Federal Register*: Jesse Juen, Tucson Field Office Manager, 12661 East Broadway, Tucson, AZ 85748-7208. Objections to the land exchange will be reviewed by the Arizona State Director who may sustain, vacate, or modify the NOD.

Please refer questions to: Shela McFarlin, Project Manager, (602) 417-9568.

Sincerely,

Jesse Juen
Field Manager, Tucson

Enclosure:
ROD

AZA - 31116 (supercedes AZA 28350)

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability for the Ray Land Exchange/Plan Amendment Record of Decision

AGENCY: Bureau of Land Management, Interior

ACTION: Ray Plan Amendment Record of Decision and Notice of Decision for the Ray Land Exchange

SUMMARY: The Bureau of Land Management (BLM) is amending the Phoenix and Safford District Resource Management Plans (RMPs) to allow the transfer of certain federal lands and mineral estate in Pinal and Gila counties (Arizona) for privately owned lands in Mohave and Pinal counties. BLM examined the lands and interests described below under the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716) (FLPMA) and through the planning process described in BLM regulations (43 CFR 1600). BLM determined the lands and interests therein as suitable for disposal by land exchange pursuant to Section 206 of FLPMA, as amended. The Record of Decision approving the plan amendment is now available.

Notice is hereby given that on April 27, 2000, Jesse Juen, Tucson Field Office Manager, Bureau of Land Management, issued a decision to approve a proposed land exchange with ASARCO, Incorporated, a New York Corporation. This Notice of Decision initiates a 45-day comment period on the decision to approve the land exchange.

Federal lands and mineral estate determined suitable for land exchange (total approximately 10, 976 acres) are described as:

Mineral Estate Only

Gila and Salt River Base and Meridian, Pinal County, Arizona

T.2 S., R.13 E.	Section 35 (80 acres)
T.2 S., R.14 E.	Section 31 (71 acres)
T.3 S., R.12 E.	Section 24 (160 acres)
T.3 S., R.13 E.	Sections 9, 10, 11, 12, 30 (1337 acres)
T.3 S., R.14 E.	Sections 6, 7, 17, 18 (495 acres)
T.6 S., R.4 E.	Sections 12, 23, 24 (637 acres) .

comprising approximately 2,780 acres.

Full Fee Estate

Gila and Salt River Base and Meridian, Pinal and Gila Counties, Arizona

T.2 S., R.13 E.	Section 34 (428 acres)
T.3 S., R.12 E.	Sections 25, 26 (1,120 acres)
T.3 S., R.13 E.	Sections 1, 2, 8, 10, 11, 13, 17, 19,20, 22, 23, 26, 27, 34, 35 (3,121 acres)
T.3 S., R.14 E.	Sections 7, 18, 19, 20, 33, 34 (1,253 acres)
T.4 S., R.14 E.	Sections 3, 4, 5, 8 (1,442 acres)
T.4 S., R.15 E.	Sections 22, 27 (272 acres)
T.5 S., R.15 E.	Sections 11, 28 (560 acres)

comprising approximately 8,196 acres.

Non-federal lands (private land now owned by Asarco Incorporated) to be acquired (total approximately 7,300 acres) described as:

Gila and Salt River Base and Meridian, Mohave County, Arizona

Knisely Ranch	T.25 N., R.18 W.	Sections 4, 17, 20 (160 acres)
McCracken Mtn.	T.14 N., R.14 W.	Sections 19, 31 (1,266 acres)
	T.14 N., R.15 W.	Sections 3, 9, 11, 15, 23, 25, 27, 35 (5,118 acres)
Sacramento Valley	T.19 N., R.19 W.	Section 23 (120 acres)
Tomlin Parcels	T.15 N., R.13 W.	Sections 19, 35 (313 acres)

comprising approximately 6,980 acres.

Gila and Salt River Base and Meridian, Pinal County, Arizona

Gila River/Cochran	T.4 S., R.12 E.	Sections 6, 7 (320 acres)
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comprising approximately 320 acres.

The purpose of the Ray Land Exchange is to acquire the non-federal land parcels which have high public values for: wilderness inholdings in the Mt. Tipton Wilderness and parcels adjacent to the Warm Springs Wilderness; checkerboard inholdings in the McCracken Mountains Area of Critical Environmental Concern; riparian zones along the Big Sandy and Gila Rivers; other habitat supporting threatened and endangered or special species; and cultural and recreation values. The public interest will be served by making the exchange.

The values of the lands to be exchanged are equal. Lands transferred from the United States to ASARCO will be subject to the following reservations, terms and conditions:

A right-of-way thereon for ditches or canals.

Three rights-of-way for the Arizona Highway Department, AZAR 04524, AZAR 04525, AZAR 024241.

Two rights-of-way for the Salt River Project, AZA 2146, AZPHX 086749.

A right-of-way for Southwest Gas Corporation, AZAR 02148.

Two rights-of-way for Arizona Public Service Company, AZA 8778, AZAR 033336.

Two rights-of-way for US West Communications Inc., AZA 6541, AZA 24678.

And a right-of-way for Pinal County Board of Supervisors, AZA 21389.

DATES: The publication of this Notice of Decision initiates a 45-day protest period on the Ray land exchange. Interested parties may submit comments or objections regarding the land exchange to the Tucson Field Office Manager, BLM, 12661 East Broadway, Tucson, AZ 85748-7208. Objections will be reviewed by the Arizona State Director who may sustain, vacate or modify this Notice of Decision. A copy of the Record of Decision may be obtained from the person/address that follows.

FOR FURTHER INFORMATION, CONTACT: Shela McFarlin, Project Manager, BLM, Arizona State Office, 222 N. Central, Phoenix, AZ 85004, or by telephone (602) 417-9568.

Jesse Juen

Field Office Manager, Tucson

Date:

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RECORD OF DECISION
ENVIRONMENTAL IMPACT STATEMENT
RAY LAND EXCHANGE/PLAN AMENDMENT

Case Number: AZA 31116 (supercedes AZA 28350)

INTRODUCTION

This combined document is the Record of Decision (ROD) approving an amendment to the Phoenix Resource Management Plan (RMP) and to the Safford District RMP, and approving a land exchange between the U.S. Department of Interior Bureau of Land Management (BLM), Tucson Field Office and Asarco, Inc. The approved plan amendment and land exchange is the Proposed Action presented in the Ray Land Exchange/Plan Amendment Final Environmental Impact Statement (EIS). Through the exchange, Asarco seeks to acquire approximately 10,976 acres of public lands and mineral estate lands (the selected lands), the vast majority of which are adjacent to its existing Ray Mine in Pinal County, Arizona. These lands are administered by the BLM Tucson Field Office. The selected lands include three isolated tracts of less than one acre each and 31 larger parcels ranging in size from approximately two acres to 2,001 acres. A plan amendment to the Phoenix and Safford Resource Management Plans (RMPs) is required as the selected lands have not been designated for disposal through previous BLM planning processes.

In exchange, Asarco is offering two separate parcels and three parcel groups (the offered lands, 18 parcels in all) that it owns, totaling approximately 7,300 acres. These private parcels are located in Pinal and Mohave Counties and include the following: 1) the Gila River Parcel at Cochran is located in Pinal County and contains a segment of the Gila River Riparian Management Area (GRRMA) and is within the Middle Gila Cultural Resource Management Area (MGRMA); 2) the Sacramento Valley Parcel abuts the Warm Springs Wilderness in Mohave County; 3) the Knisely Ranch parcel group lies within the Mount Tipton Wilderness in Mohave County; 4) the Tomlin Parcel group lies adjacent to the Big Sandy River, located within the Big Sandy Herd Management Area; and 5) the McCracken Mountains Parcel group occurs within the McCracken Desert Tortoise Habitat Area of Critical Environmental Concern (ACEC).

This Record of Decision describes the selected alternative, other alternatives considered, the rationale for adopting the selected alternative, required mitigation, and a description of public participation in the identification, development, and evaluation of significant issues generated by this proposal. Environmental analysis of this project, as presented in the Final EIS, has been thoroughly reviewed by federal agencies, state agencies, and private organizations and individuals. Comments and issues raised in this process have been addressed through additions and clarification of sections in the FEIS, and in the response to comments in the FEIS and in this Record of Decision.

DECISION TO APPROVE THE RAY PLAN AMENDMENT

Decision and Rationale

It is the decision of the Arizona State Director of the BLM to authorize an amendment to the Phoenix and Safford District RMPs to change the land tenure designation from "retention" to "disposal" for a total of approximately 10,339 acres, as described in Appendix A. Specifically:

- 1) Approximately 9,906 acres designated in the 1988 Phoenix RMP as part of the White Canyon Resource Conservation Area (RCA) to be changed from retention to disposal; and
- 2) Approximately 433 acres designated in the 1993 Safford District RMP as part of the former Safford District Long-Term Management Area (LTMA) to be changed from retention to disposal.

The decision to issue an amendment to change the land tenure classifications in the Phoenix and Safford District RMP's enables the BLM to issue a decision approving the Proposed Action of the Ray Land Exchange. This objective is accomplished by 1) changing the land tenure decision from retention to disposal for those public lands within the White Canyon RCA that were selected for the exchange, and 2) changing the land tenure decision from retention to disposal for the similarly selected public lands within the former Safford District LTMA.

Management decisions under the approved RMPs for the areas affected by the plan amendment include approving mineral development consistent with the plan. Asarco holds 99% of the unpatented mining claims on these acres and has indicated that the company will expand its mining operations under the General Mining Act of 1872 in compliance with the BLM-administered 43 CFR 3809 regulations. The Plan Amendment permits BLM to consider an exchange of lands in which the public would receive highly valued lands and rights in return for the selected lands whose foreseeable uses are mining related. Unless an exchange is approved, the areas affected by the plan amendment will continue to be managed as multiple-use lands under the Federal Lands Policy and Management Act (FLPMA).

The proposed land tenure decision adjustments apply to both full fee estate and split (subsurface mineral) estate parcels. Table 1-1, summarizes the acreage of full and mineral estate selected lands managed under the Phoenix and Safford District RMPs.

Table 1. Acreage of Full Fee Estate and Mineral Estate Lands Changed From Retention to Disposal under the Phoenix and Safford District RMPs

RMP	Full Fee Estate (ac)	Mineral Estate (ac)	Total
Phoenix	7,841	2,065	9,906
Safford District	355	78	433
TOTAL	8,196	2,143	10,339

PLAN AMENDMENT ALTERNATIVES ANALYZED IN THE EIS

Four alternatives were analyzed for the plan amendment in the EIS, including the No Action Alternative, which would have allowed no change from the existing land tenure decisions in the RMPs. Each plan amendment alternative paralleled those evaluated for the land exchange except where noted below. Four alternatives are described in more detail under the land exchange Alternatives/Environmental Consequences section.

PLAN AMENDMENT ALTERNATIVES CONSIDERED, BUT ELIMINATED

Expanded Plan Amendment Alternative. Although Asarco has identified all the parcels the company would like to acquire, other BLM parcels in the Ray Complex Area may meet the criteria for disposal. The purpose of this alternative was to identify and designate additional BLM parcels for disposal in order to improve management efficiency of public lands in the Ray Complex Area.

The BLM rejected further consideration of this alternative because the process to identify and elect to dispose of additional parcels (other than those desired by Asarco) is not a management priority for the Tucson BLM Field Office at this time. The BLM did not want to invest its limited resources into studying additional scattered parcels for the following reasons: many of the scattered, smaller parcels are encumbered by mining claims; there is no likely proponent (for exchange) since Asarco has fully identified future needs; additional archaeological and biological evaluations or other inventories would need to be conducted. In summary, identifying parcels for future disposal and associated actions when the likelihood of disposal is low would not alleviate long-term management problems for BLM.

ISSUE (PROTEST) RESOLUTION

The period for requesting an administrative review of the proposed plan amendment with the BLM Director (filing a protest) opened on June 25, 1999 and closed on July 26, 1999. Three protest letters were received which noted the following five issues: 1) remanding the proposed amendment decision until such time as the exchange is finalized, so that both actions would be subject to protest simultaneously; 2) failure of the proposed plan amendment to meet the purpose and need for action, as defined in the EIS, specifically on its public lands management objectives; 3) re-designation of the White Canyon Area of Critical Environmental Concern (ACEC) to permit its fragmentation; 4) stating that the EIS inadequate in its analysis of environmental impacts in the Copper Butte/Buckeye area; and 5) removing BLM and possibly other regulatory entities from administering unpatented mining claims and surface use activities thereon, especially in an area with other BLM lands and with sensitive resources.

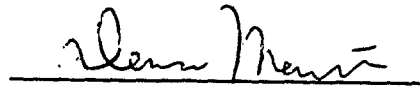
Protest issues were individually reviewed and the Director determined that the BLM Arizona State Director followed applicable procedures, laws, regulations, and policies and considered all relevant resource factors and public input in developing the proposed Ray Plan Amendment to each RMP. No changes to the EIS or to the approved plan amendment were required to resolve protest issues.

PUBLIC PARTICIPATION ON THE PLAN AMENDMENT

Since the EIS process was combined for the proposed Ray Plan Amendment and the proposed land exchange, the public participation efforts were combined as well. See the appropriate section that follows below which summarizes the public scoping, review and comment periods, hearings and consultations and meetings held for the plan amendment and land exchange. One additional step applied to the plan amendment, however, following planning regulations 43 CFR Part 1600. An additional opportunity for the public to comment was identified through BLM's mailing in January 1998 of the planning criteria, management objectives and management situation analysis. No comments were received from the public on this mailing.

MITIGATION AND IMPLEMENTATION

No specific mitigation measures have been identified for the approved plan amendment. Mitigation for the land exchange has been included in the sections which follow (Table 3). The two RMPs will be amended under this approved Ray Plan Amendment. Multiple-use management as provided under each RMP will continue, however, until and unless the exchange of specific parcels occurs. Resource management prescriptions and land use actions and permits will continue under the objectives and processes identified in each RMP.



Denise Meridith
Arizona State Director
April 27, 2000

DECISION TO APPROVE THE RAY LAND EXCHANGE

Decision and Rationale

It is the decision of the BLM Tucson Field Manager to authorize the exchange of BLM managed public lands for private lands as described in the Proposed Action of the Final Ray Land Exchange/Plan Amendment EIS, which includes the following three actions:

1) Asarco will acquire title to 31 parcels, approximately 10,976 acres of public lands, located in Pinal and Gila Counties (Table 1-2). A location map of these parcels is provided in Figure 1-1 of the FEIS. Legal descriptions of these lands are provided in Appendix A of this ROD.

Of the 31 parcels of selected lands, 28 are located near Asarco's Ray Mine operations in southwestern Gila County and northeastern Pinal County. Parcels of selected lands are grouped into three areas of existing or planned mine-related development: Ray Complex, Copper Butte/Buckeye, and Chilito/Hayden. The remaining three parcels of selected lands lie just west of Casa Grande in western Pinal County (Figure 1-1 of the FEIS).

Seven of the 31 parcels (RM-2, RM-3, RM-4, RM-5, RM-6, RM-6.4, and RM-9) are isolated fragments of public lands remaining after mineral claims were patented. Six of the seven parcels are five acres or less in size; the remaining parcel is 30 acres. Each of these seven parcels is adjacent to or surrounded by Asarco's private land. The remaining 24 parcels range in size from approximately eight to 2,001 acres.

In addition, these lands include 8,196 acres of full fee estate public lands (surface and subsurface mineral estates) and 2,780 acres of split-estate land (subsurface mineral estates only). The surface estates of the split-estate parcels are owned by either Asarco (approximately 1,638 acres) or the State of Arizona (approximately 1,142 acres). Asarco has applied to purchase the surface estates from the State of Arizona. Since Asarco is the prospective surface owner (the proposed record owner) of the state surfaces, these mineral interests may be conveyed under FLPMA Section 209.

2) The BLM will acquire title to 18 parcels of private land, approximately 7,300 acres, located in Pinal and Mohave Counties (Table 2). A location map of each of these parcels is located in Figures 2-1 to 2-5 of the FEIS. Legal descriptions of these lands are provided in Appendix A of this ROD. These properties consist of: the Gila River Parcel at Cochran (320 acres); the Knisely Ranch Parcels (160 acres); McCracken Mountains Parcels (6,384 acres); Sacramento Valley Parcel (120 acres); and Tomlin Parcels (320 acres).

3) BLM will acquire five surface water rights and one well permit on seven surface water sources and one well, which include the following: a 1.1 mile stretch of the Gila River located on the Gila River Parcel at Cochran; Arizona Spring and Pine Spring located on the Knisely Parcels; a 0.5 mile stretch of the Big Sandy River located on the Tomlin #4 Parcel; the McCracken Mountains Catchment No. 1, McCracken Mountain Tank and Hill Tank located on the McCracken Mountains Parcels. See Table 3-33 in the FEIS for more information.

Table 2. Summary of Parcels Acquired by Asarco and BLM

Acquirer	Number of Parcels	Full Fee Estate Acreage	Split-estate Acreage	Location
Asarco	31	8,196 acres (parcels range from <1 acre to >2,001 acres)	Subsurface Estate Only: 2,780 acres (parcels range from 30 acres to 595 acres)	28 parcels in Pinal County; 3 parcels in Gila County
BLM	18	6,940 acres (Tomlin Parcels, McCracken Mtns Parcels, portions of Gila River Parcel at Cochran and Knisely Ranch Parcels)	Surface Estate Only*: 360 acres (160 acres of Gila River Parcel at Cochran; 80 acres of Knisely Ranch Parcels; 120 acres of Sacramento Valley)	1 parcel in Pinal County, 4 parcel groups in Mohave County

* BLM already owns the mineral estate for the acreage listed

MITIGATION

By design, a land exchange offers compensatory, offsetting or improved resource values. To determine and prioritize the offered lands, BLM identified significant resources to be acquired in exchange for values on the selected lands. Table 3 contains several examples of such off-setting or improved values. In addition, the BLM has required the following mitigation measures to be taken as part of the Proposed Action.

Table 3. Summary of Required Mitigation for the Proposed Action		
Resource	Issue/Impact	Mitigation
Biological Resources		
Wildlife/Special Status Species/T&E Species	<i>If AGFD's reintroduction site is approved, there may be potential future impacts to bighorn sheep habitat in the Picketpost reintroduction area</i>	Coordination between BLM, AGFD and Asarco to pursue various opportunities for habitat improvements. This will occur once (if) a specific reintroduction area receives approval.
	Loss of 6,646 acres of unoccupied potential cactus ferruginous pygmy-owl habitat	Asarco will follow the 3/15/00 USFWS recommendation for additional surveys as a conservation enhancement under the 2000 protocol.
	Loss of five acres of potential southwestern willow flycatcher habitat	No additional. Compensated through offered lands acquisition of habitat along the Gila River and Big Sandy River.
	Loss of bat roosts providing potential habitat for lesser long-nosed bat	Asarco will fence off any of the eight bat roosts outside of Production Operation and Support (POS) use areas using a suitable design to allow for bat use.
	Loss of tortoise habitat and destruction of burrows	No net loss. Compensation through offered lands habitat. Asarco will follow 1997 AGFD Guidelines for handling the Sonoran Desert tortoise during construction.
Land Use Resources		
Access	Loss of access to the White Canyon Wilderness, Artesian Well, Coke Ovens and Gila River	Asarco to construct roads (to BLM specifications) before mining uses commence: 1) route #2 (FEIS preferred route) adjacent to existing Battle Axe Road to White Canyon Wilderness from Highway 177; and 2) a short segment through Section 26, northwest corner.

Table 3. Summary of Required Mitigation for the Proposed Action

Resource	Issue/Impact	Mitigation
Arizona Trail	<i>If trail is designated:</i> Loss of access through Copper Butte/Buckeye area to White Canyon Wilderness	If a segment is designated across the exchange lands, Asarco would allow for temporary trail loops. For permanent loops, to avoid mining activities, Asarco would engineer, design, construct and fund trail building depending on the segment designated.
Grazing	Loss of grazing improvements	Grazing allottees will be compensated for loss of authorized range improvements.
Special Management Area	Improvement of public access and ACEC management. <i>If Asarco acquires Section 24 from the State</i> , approx. 480 acres will be donated to the BLM after any reservations are made related to Asarco access needs.	BLM to manage donated lands as part of the existing White Canyon ACEC. Legal public access through this section will be provided to the White Canyon Wilderness.
Cultural Resources		
Archaeological Resources	Loss of archaeological sites eligible for the <i>National Register</i>	Cultural Resource Treatment Plan identifies mitigation: archival research, site recording, mapping, protection and excavation for sites determined eligible. Mitigation includes Tribal coordination and participation and a plan of action should human remains be discovered.
Places of Traditional Importance to Native Americans	<i>If any are identified:</i> Loss of places of traditional importance to Native Americans	No such sites were identified. Cultural Resource Treatment Plan continues Native American involvement during mitigation in sites which were identified as interest to Tribes.

MANAGEMENT CONSIDERATIONS

It is recognized that inherent to a land exchange is that the acquisition of resources in one area means the resources from another area are given up (i.e., are no longer subject to public land management). Approval of this exchange is based on information presented in the Final EIS with regards to the prerequisites for an approval of an exchange that are found in Section 206 of FLPMA of 1976 as amended by FLEFA of 1988.

Public Interest Determination

Section 206 of the Federal Land Policy Management Act of 1976 (FLPMA) directs the Secretary of the Interior, in considering whether the public interest will be served by the exchange, to give full consideration to better Federal land management and the needs of State and local governments, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife. The public

interest will be served when the values and objectives of the Federal lands or interests to be conveyed are not more than the potential public values and objectives of the non-Federal lands to be acquired.

For the Ray Land Exchange, the values of and objectives for the private offered lands to be acquired have been considered and found to be more than the values of and public objectives for the selected federal lands to be conveyed to Asarco. In summary, the approval of the exchange meets Section 206 by:

- 1) Facilitating better Federal land management by acquiring private lands within special areas of designation (the McCracken Desert Area of Critical Environmental Concern (ACEC) which exhibit a "checker board" land ownership pattern and removing inholdings from the Mt. Tipton Wilderness). This will remove resource and use conflicts, facilitate a more efficient management, and enable better implementation of resource management plan (RMP) decisions for the Kingman RMP.
- 2) Improving wildlife and ACEC habitats by adding the Gila River at Cochran parcel and McCracken ACEC parcels to federal protection and management. The Gila River parcel (320 acres) supports threatened and endangered species by providing critical habitat for the cactus ferruginous pygmy-owl and occupied habitat for the southwestern willow flycatcher. The McCracken ACEC provides 6,500 acres of Category I desert tortoise habitat. The Sacramento Valley and Tomlin parcels also support Category I and II desert tortoise habitat.
- 3) Supporting resource objectives for improving riparian zones by acquiring parcels along the Big Sandy and Gila Rivers. Tomlin Parcel #4 and the Gila River at Cochran Parcel contain riparian values and enable more efficient and effective management of riparian zones along those rivers.
- 4) Continuing to support mining activities as approved in the Phoenix RMP. The exchange provides lands which will enable Asarco to plan expansions, comply with environmental permits, buffer operations from surrounding lands, and continue operating on parcels with approved mine plans of operations (MPOs) authorized under 43 CFR 3809.
- 5) Improving management of mineral rights by removing split estate lands from BLM administration (2,808 acres) of federal estate below state or private surface and from parcels with existing operations under approved MPOs. This does not alter federal permits from other agencies administering significant environmental programs such as the Clean Water Act and Clean Air Act.

An additional rationale for approving the land exchange is that the BLM considers the continuation of mining as the foreseeable use of most of the selected federal lands whether the exchange occurs or not. Mining is the likely purpose for the selected lands given that: Asarco holds over 750 unpatented mining claims; BLM is currently processing a patent application from Asarco for 387 acres of Copper Butte to support mining on the selected lands; mineral potential reports indicate ore bodies which may have economic potential for future mining; mining is the current use for 100% of the parcels in the Ray pit.

In making this decision, the BLM also considered other laws and regulations, including the General Mining Act of 1872, which gives Asarco the right to develop unpatented mining claims held; the existence of major environmental laws administered by other agencies which will continue to apply to areas mined under private ownership; the recently adopted State of Arizona reclamation standards; and Pinal County administered air quality permits for existing and new operations.

BLM finds that the exchange serves the public interest by meeting objectives defined in both relevant RMPs and through public participation, by providing additional protection for natural resource values and by improving management. The land exchange processing has met all regulatory requirements and implementation involves a well developed mitigation program to offset, compensate or replace values important to the public and to include interested agencies, Tribes and organizations for specific resources.

ALTERNATIVES/ENVIRONMENTAL CONSEQUENCES

Land Exchange Alternatives Analyzed in the FEIS

Buckeye Alternative. This land exchange alternative was developed in response to issues raised in public scoping comments over the proposed disposal of Sections 25 and 26, T3S, R13E near Walnut Creek. These sections are in selected lands Parcel CB-1 in the Copper Butte/Buckeye Area (Figure 2-6).

The Buckeye Land Exchange involves reducing the total acreage of the selected lands from approximately 10,976 acres to approximately 10,176 acres by excluding about 800 surface and subsurface acres of Parcel CB-1 in Sections 25 and 26. About 320 acres of Parcel CB-1 in the eastern quarter would remain in the land exchange proposal. Under this alternative, all offered lands would be included with the exception of Section 9 of the McCracken Mountains Parcels (specifically, 640 acres located in T14N, R15W), resulting in a total offered lands package of approximately 6,659 acres.

Copper Butte Land Exchange. This land exchange alternative was developed in response to scoping issues regarding access and recreation to the White Canyon Wilderness through the Copper Butte Area. The Copper Butte Area selected lands Parcels CB-1 to CB-5 lie adjacent to the White Canyon Wilderness, east of Highway 177.

The Copper Butte Land Exchange involves reducing the total acreage of the selected lands from approximately 10,976 acres to approximately 9,161 acres by excluding surface and subsurface acres of Parcels CB-1 (1,120 acres), CB-2 (615 acres), and portions of Parcel CB-3 (80 acres) for a total of 1,815 acres. About 652 acres of Parcel CB-3 and all of Parcel CB-4 would remain in the land exchange proposal. Under this alternative, all offered lands would be included with the exception of Section 9 (640 acres, T14N, R15W), Section 3 (638 acres, T14N, R15W), and a portion of Section 19 (420 acres, T14N) of the McCracken Mountains Parcels, resulting in a total offered lands package of approximately 5,601 acres.

No Action Alternative. Under this alternative, no lands would be exchanged; the selected lands would remain in public ownership and would continue to be managed by BLM according to the multiple-use management directives in FLPMA and the current Phoenix and Safford District RMPs. Under the No Action alternative, future management actions by BLM are expected to include processing multiple mining MPO or NOI proposals (under 43 CFR §3809) for individual actions as submitted, and/or processing applications from Asarco to patent their existing claims on the selected lands. Under the No Action alternative, the offered lands would remain in Asarco ownership and would most likely be marketed, with the assumption that they would be sold and divided into smaller parcels (Genesis 1997).

Land Exchange Alternatives Considered, but Eliminated

Long-Range Prospect Alternative. In this land exchange alternative, Asarco would reconfigure the selected lands to exclude property classified in the Long-Range Prospect foreseeable mining use category (1,733 acres, orange colored parcels in Figure 2-7 of the FEIS). The total acreage of selected lands would drop from 10,976 acres to 9,243 acres. The BLM has rejected further consideration of this alternative because not all of the Long-Range Prospect selected lands are of public concern or have resource values which may warrant consideration for retention. The only long-range prospect which has resource considerations and which received public comment during scoping was the Buckeye long-range prospect. Therefore, an alternative was developed and considered in detail that excludes a large portion of Parcel CB-1.

Split-Estate Alternative. In this land exchange alternative, Asarco would modify the configuration of the selected lands to exclude approximately 2,142 acres of split-estate parcels for which the Arizona State Land Department (ASLD) manages the surface. Under current policy, BLM is unable to complete the exchange of a mineral estate unless the person who acquires the land controls the surface estate. Asarco has initiated the process for acquiring the surface from the ASLD.

Mining Plan of Operations Alternative. Under this alternative, Asarco would submit an MPO, as described in federal regulations governing mining operations on federal public lands (43 CFR § 3809.1-5). The BLM rejected this alternative from further consideration because Asarco has not submitted a MPO to BLM suitable

for approval, and BLM cannot require a MPO from Asarco for the selected lands in question to process a land exchange proposal.

Hackberry Alternative. Under this land exchange alternative, approximately 1,530 acres of Parcel RM-18 (Hackberry) would be retained in federal ownership. The quantity of offered lands would have to be reduced, and a plan amendment would still be required for the remainder of the selected lands. The purpose of this alternative was to retain in federal ownership a substantial number of archaeological sites, several intermittent springs, and Category II desert tortoise habitat.

Production Lands Alternative. This alternative was an attempt to reconfigure the land exchange around lands that would be subjected to active mining and receive direct impacts. Under this land exchange alternative, approximately 7,090 acres of selected lands would be retained in federal ownership. These lands are located in Long-Range Prospect, Intermittent, and Transition Use Areas. The quantity of offered lands would have to be reduced and a plan amendment would still be required for the remainder of selected lands located in Production, Operation and Support and Existing Disturbed areas.

Environmentally Preferable Alternative

Implementing regulations for NEPA 40 CFR Part 1508.2 (B) requires an agency to specify the alternative or alternatives which were considered to be environmentally preferable in the process of reaching its decision. The definition of environmentally preferable is the alternative which causes the least damage to the physical and biological environment, and which best protects, preserves, and enhances historic, cultural and natural resources. The BLM determined that the land exchange alternatives are environmentally preferable over the no-action alternative due to: 1) the foreseeable uses projected for the selected lands, which is mining or mine-related activities; and 2) the offered lands bring specially-designated areas under federal protection and management. The Proposed Action (preferred alternative) for the Ray Land Exchange is, therefore, the environmentally preferable alternative.

No Mining Election

The Mining Law of 1872 gives the proponent the right to develop the valuable minerals found in the unpatented mining claims presently encumbering the selected public lands. That is, the proponent's ability to develop the valuable mineral deposits in the selected lands does not depend on the land exchange taking place. Rather, whether the proponent elects to develop the lands currently subject to unpatented mining claims depends on the following: if the land exchange does take place, the ability of the opponent to secure the state and federal permits needed for mine operations; or, if the land exchange does not take place, the ability of the proponent to obtain an approved mining plan of operations and, if necessary, demonstrate that the mining claims are valid.

Because the decision to mine any portion of the selected public lands is an election made solely by the proponent and does not depend on the culmination of the land exchange, after careful consideration, BLM determined that it is not practical to examine a separate "no mining" alternative. Moreover, given the prevailing circumstances, an election by the proponent not to mine cannot be considered a reasonably foreseeable possibility under any of the alternatives, including the No Action Alternative.

ENVIRONMENTAL CONSEQUENCES OF PROPOSED ACTION

Table 4. Summary of Anticipated Environmental Consequences of the Proposed Action

Resource/Issue	PROPOSED ACTION (Selected Alternative)
BIOLOGICAL RESOURCES	
Upland Plant Communities	Asarco to acquire approximately 10,891 acres of upland plant communities including 10,000 acres of Sonoran desert scrub and 891 acres of disturbed plant communities.
	BLM to acquire approximately 7,148 acres of upland plant communities
<i>Section 4.1.1 in FEIS</i>	
Riparian Plant Communities	Asarco to acquire approximately 34 acres of riparian communities; 17 acres of Xeroriparian mixed grass, and 17 acres of Sonoran Riparian Deciduous Forest.
	BLM would acquire approximately 152 acres of riparian plant communities
	118 acre net gain to BLM administered riparian habitat
<i>Section 4.1.2 in FEIS</i>	
Wildlife/Wildlife Habitats	Asarco to acquire approximately 10,976 acres of wildlife habitat (891 already disturbed)
	BLM would acquire approximately 7,300 acres of wildlife/wildlife habitat on the offered lands
<i>Section 4.1.3</i>	
Special Status Species	Federal protection of special status plants, fish and wildlife located on selected lands would be discontinued due to exchange. Asarco to acquire approximately 6,860 acres of Category II and III desert tortoise habitat.
<i>Section 4.1.4 in FEIS</i>	BLM to acquire habitat for ten special status wildlife species including 7,144 acres of Category I and II desert tortoise habitat.
Threatened and Endangered (T&E) Species	Asarco to acquire approximately five acres of potential southwestern willow flycatcher and approximately 6,646 acres of potential, unoccupied cactus ferruginous pygmy-owl habitat and potential habitat for lesser long-nosed bats.
Plants, Fish and Wildlife	BLM would acquire offered lands which provide habitat for the bald eagle, cactus ferruginous pygmy-owl and southwestern willow flycatcher.
<i>Section 4.1.5 in FEIS</i>	
Critical Habitat	BLM would acquire the Gila River Parcel at Cochran, which is proposed critical habitat for the cactus ferruginous pygmy-owl.
<i>Section 4.1.6 in FEIS</i>	
PHYSICAL RESOURCES	
Surface Water	Asarco would acquire 13 springs and 3 stockponds on the selected lands.
<i>Section 4.2.1 in FEIS</i>	BLM would acquire surface water features on the offered lands, which include 0.50 miles of the Big Sandy River, 2 springs, 2 stockponds, 1.1 miles of the Gila River, and one wildlife catchment.
Groundwater	Asarco would acquire one abandoned stock watering well.
<i>Section 4.2.2 in FEIS</i>	BLM would acquire one well.

Table 4. Summary of Anticipated Environmental Consequences of the Proposed Action

Resource/Issue	PROPOSED ACTION (Selected Alternative)
Surface Water Rights/Well Permits <i>Section 4.2.3 in FEIS</i>	<p>Five federal reserved rights (Public Water Reserve No. 107) would be withdrawn by BLM from ADWR's records. Seven other surface water rights claims would transfer to Asarco, including three associated with stockponds on the Copper Butte Parcels and four associated with springs on RM-18.</p> <p>Five surface water rights and one well permit on the offered lands would transfer to BLM.</p>
Air Quality <i>Section 4.2.4 in FEIS</i>	<p>The exchange of selected lands in and of itself would not affect air quality.</p> <p>Acquisition of the offered lands is not expected to impact air quality.</p>
Soils <i>Section 4.2.5 in FEIS</i>	<p>Approximately 10,976 acres of soils on the selected lands would be acquired by Asarco.</p> <p>BLM would acquire 7,300 acres of soils on the offered lands.</p>
MINERAL RESOURCES Mineral Potential <i>Section 4.3.1 in FEIS</i>	<p>None</p>
Mineral Rights <i>Section 4.3.2</i>	<p>BLM would acquire the offered lands and petition to withdraw two parcels to mineral entry (Tomlin #4 and Gila River Parcel at Cochran).</p>
LAND USE Land Ownership <i>Section 4.4.1</i>	<p>Two percent increase in privately-held lands in Pinal County and 0.3 percent increase in Gila County. In addition, a 0.1 percent decrease in publicly-held lands in Pinal County. BLM administered split-estate lands in the Ray Complex, Copper Butte/Buckeye and Chilito/Hayden areas would decrease from 48 to 43 percent.</p> <p>Increase in publicly-held lands in Mohave County (6,980 acres).</p>
Management of Public Lands <i>Section 4.4.2</i>	<p>BLM would have substantially less management responsibilities under 43CFR 3809 if Asarco acquires the selected lands.</p> <p>BLM will have fewer management conflicts in various wilderness and ACEC areas within Arizona by acquiring the offered lands.</p>
Access and Recreation <i>Section 4.4.3</i>	<p>Some potential alignments proposed for the AZ Trail may be impacted as these would require Asarco permission to develop or require realignment.</p> <p>BLM would acquire offered lands in five special management areas, consolidating public land ownership and alleviating potential public access problems through those lands.</p>
Rights-of-Way <i>Section 4.4.4</i>	<p>BLM would transfer title of selected lands to Asarco and all rights-of-way would remain intact. Asarco would no longer need an easement for Parcel CH-4 (AZA 1000).</p> <p>Acquisition of the offered lands is not expected to impact any rights-of-way.</p>

Table 4. Summary of Anticipated Environmental Consequences of the Proposed Action

Resource/Issue	PROPOSED ACTION (Selected Alternative)
Grazing <i>Section 4.4.5</i>	BLM would relinquish management of and grazing income of \$1,239.30/year from approximately 8,196 acres (918 AUMs) and seven improvements within seven grazing allotments. BLM would acquire 7,300 acres within five allotments, totaling 288 AUMs and \$587.25 per year.
Visual Quality <i>Section 4.4.6</i>	Visual impacts from mining would occur on private lands rather than on public lands. BLM would acquire all of the offered lands, and visual quality would be protected from development in special management areas.
Wilderness/ Special Management Areas <i>Section 4.4.7</i>	Asarco to acquire selected lands, some of which are adjacent to or near the White Canyon wilderness and ACEC. BLM acquires offered lands in, or adjacent to, the Mount Tipton and Warm Springs Wilderness Areas as well as lands within three special management areas. Acquisition improves management proficiencies within each RMP and reduces management conflicts regarding access for recreation use.
CULTURAL RESOURCES Archaeological Resources <i>Section 4.5.1</i>	Potential impacts to 37 National Register-eligible sites would be mitigated through the implementation of a treatment plan The exchange would place at least 11 sites into public ownership, where they would be afforded federal management and protection under ARPA and NHPA.
Places of Traditional Importance <i>Section 4.5.2</i>	None identified through Tribal consultations.
SOCIOECONOMIC RESOURCES Population and Demographics <i>Section 4.6.1</i>	None expected.
Local and Regional Economy <i>Section 4.6.2</i>	The exchange would affect the local economy through increased property tax revenues in Pinal and Gila Counties. Reductions in the property tax rolls of counties containing the offered lands are small and are potentially offset by PILT payments. For Mohave County, the result is a net loss of \$15,700, \$3,900 in Pinal County of the county's total property tax receipts.
Environmental Justice <i>Section 4.6.3</i>	None. Mitigation for access meets community concerns.

FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

This ROD complies with or is consistent with all applicable laws, orders and regulations including, but not limited, to:

Federal Land Exchange Facilitation Act of 1988 (FLEFA). This act facilitates and expedites land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving lands managed by the Departments of the Interior and Agriculture. BLM has determined that the Ray Land Exchange follows the uniform rules and regulations pertaining to land appraisals and the processes and procedures consistent with determining public interest.

Federal Land Policy and Management Act (FLPMA), as amended. FLPMA states the policies declared by Congress for managing, planning and disposing of public lands. Public land must be retained in Federal ownership unless it is determined that disposal of a particular parcel will serve the national interest. Public lands must be inventoried, evaluated, planned and managed in a manner that will protect various ecological and educational values including areas of critical environmental concern. BLM has determined that the Ray Plan Amendment and disposal of public lands through the Ray Land Exchange are in compliance with FLPMA policy and directives.

Endangered Species Act (ESA). ESA provides protection for animal and plant species in danger of extinction (endangered) and those that may become so in the foreseeable future (threatened). Section 7 of the ESA requires Federal agencies to ensure that all federally associated activities do not have adverse impacts on the continued existence of threatened or endangered species or on designated areas that are important in conserving those species. The FEIS (supported by BE studies) has disclosed all impacts related to biological resources in the project vicinity. Section 7 consultation with the U.S. Fish and Wildlife Service has been completed—see Appendix B.

National Environmental Policy Act (NEPA). NEPA's intention is to assure that all branches of government give proper consideration to the environment prior to undertaking any major federal action that significantly affects the environment. BLM has determined that the Ray Plan Amendment/Land Exchange EIS conforms to NEPA and its implementing regulations 40 CFR Parts 1500-1508.

National Historic Preservation Act (NHPA). The NHPA establishes as Federal policy the protection of historic sites and values in cooperation with other nations, states, and local governments, and Indian Tribes. BLM has determined, in consultation with the State Historic Preservation Office (SHPO), interested Tribes and the public, that the project complies with all requirements to identify, evaluate and consider the effects of the action on historic properties eligible for the National Register.

Clean Air Act (CAA). Under the CAA amendments of 1990 and A.R.S. 49-401 et seq., ADEQ and Pinal County Air Quality Control Division (PCAQCD) are responsible for the Title V permit program, which covers virtually all significant sources of air emissions, regardless of land ownership within Pinal County, Arizona. The permit program sets standards for pollution control and monitoring requirements, source emission limits, and impacts to local and regional air quality.

Clean Water Act (CWA). The U.S. Army Corps of Engineers (COE), the Environmental Protection Agency (EPA) and the Arizona Department of Environmental Quality (ADEQ) administer the compliance programs associated with Sections 401, 402, and 404 of the CWA. These provisions are designed to control impacts to surface waters. It will be the responsibility of Asarco to meet these permitting requirements with the appropriate agency for its activities.

Mining Law of 1872, as amended. The Mining Law is an Act to promote the development of the mineral resources of the United States. Under this law individuals are permitted to enter open Federal public lands to explore for valuable mineral deposits such as gold, silver, copper, etc. Individuals can stake unpatented mining claims on public lands found to have any of these valuable minerals. These claims are to be physically located (i.e., marked on the ground) and, in order to be determined valid, a BLM mineral validity examination is required. A title or patent to both surface and subsurface areas determined by BLM to contain a valuable mineral deposit can be obtained for a set fee. Asarco is the holder of all but three unpatented mining claims

on the selected lands. These claims are carried on relevant BLM records as active and in compliance with all relevant filing requirements. Asarco will relinquish all unpatented mining claims prior to conveyance of the selected lands.

Superfund Amendment and Re-Authorization Act of 1986 (SARA), as amended. SARA re-authorized CERCLA to continue identifying sites containing hazardous substances and authorizing required site remediation. Prior to conveyance, a Level 1 assessment will evaluate the potential for hazardous substance contamination and petroleum products on both offered and selected lands. Remedial actions such as removal would be required before any conveyance of property into federal ownership.

Executive Order 11990 -- Wetlands. Executive Order 11990 requires a construction agency to "avoid to the extent possible the long-term and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. . . ." BLM has determined that processing the land exchange is in conformance with the Order.

Executive Order 11988 -- Floodplain Management. Executive Order 11988, signed May 24, 1977, requires under Section 3(d) that when property floodplains are proposed for disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where provide by law; or (3) withhold such properties from conveyance. Under (2), BLM will include in the conveyance patent language the requirements to abide by Gila County Floodplain Fee number 716491 (adopted 12/22/1986, amended 6/28/1993 and 11/04/1997) and by Pinal County Ordinance number 81582 (adopted 07/25/1988).

Executive Order 12898 -- Environmental Justice. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," was signed on February 11, 1994 and amended on January 30, 1995. In general, Federal agencies shall make achieving environmental justice part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations in the United States and its territories and possessions. The BLM fully complied by identifying, evaluating and mitigating environmental justice populations and their issues.

Executive Order 13007--Indian Sacred Sites. Executive Order 13007 requires agencies to accommodate access to sacred sites on Federal land by Indian Tribes and to try to avoid damaging the physical integrity of such sites, in consultation with the groups involved. No sacred sites were identified through consultation with interested Tribes.

Secretary of the Interior Order 3175 -- Indian Trust Assets. U.S. Department of the Interior policy (Secretary of the Interior Order 3175) requires that actions under NEPA consider potential effects on Indian Trust Resources, or Indian Trust Assets (ITAs). BLM determined that no Indian Trust Assets were affected by the Ray Plan Amendment and land exchange as documented in the EIS.

PUBLIC INVOLVEMENT

FEIS Chapters 5 and 7 provide details of the scoping, public meetings and hearings, mailings, coordination and consultation processes, and public review and comment periods for the Ray Land Exchange/Plan Amendment. Legal documents were published in the Federal Register and in local newspapers consistent with the BLM planning and land exchange regulations and manuals.

Since publication of the FEIS in June 1999, additional consultation and coordination has occurred as identified below.

Coordination with USFWS. The BLM requested concurrence from USFWS on its determinations of may affect, not likely to adversely affect for southwestern willow flycatcher, lesser long-nosed bat, peregrine falcon and bald eagle and requested a Biological Opinion on the cactus ferruginous pygmy-owl based on the determination of may affect, likely to adversely affect. The peregrine falcon has since become de-listed. The

BLM requested conference concurrence on its determination of may affect, not likely to adversely affect, for proposed critical habitat for the cactus ferruginous pygmy-owl. The USFWS issued a biological opinion in March 2000 (Appendix B). In its biological opinion, USFWS concurs that the plan amendment and land exchange is not likely to adversely affect the southwestern willow flycatcher, bald eagle, and lesser long-nosed bat. The biological opinion also stated that the plan amendment/land exchange is not likely to jeopardize the continued existence of the cactus ferruginous pygmy-owl.

Coordination with Tribes. BLM, with Asarco, continues consultation with Indian Tribes through field visits, meetings, phone calls and letters. The Tribes listed in the FEIS were also provided materials for review: an overview of Native American use of the selected lands; synthesis of archaeological surveys; BLM's determination of eligibility for sites under the NHPA ; the results of testing done for eligibility; and proposed cultural resource treatment plan. Through a series of site visits and meetings, the Four Southern Tribes provided BLM with concerns on site treatment and protection for inclusion in the mitigation plan for cultural resource sites affected by the exchange. Consistent with the intent of Native American Graves Protection and Repatriation Act (NAGPRA) and in response to Tribal concerns, BLM has prepared a plan of action for Tribal review, which addresses any discoveries of any human remains and associated objects. Native American participation during fieldwork has been included in the cultural resource treatment plan.

Responses to Comments on FEIS

BLM received 13 comment letters on the FEIS. Through analysis of the comments within these letters, BLM has determined that the following four issues need clarification or additional discussion. Commentors are noted in brackets.

Issue 1: Completion of the land exchange permits mining to occur on the selected lands. [EPA Region IX, Sierra Club, Bureau of Indian Affairs Phoenix Area and Williams Family]

Response: The ROD permits 8,196 acres of full fee estate public lands and 2,780 acres federal minerals to be exchanged. Without the land exchange, these selected lands and federal minerals are already available for mining development under the General Mining Law of 1872 and through the 43 CFR Part 3809 regulations. Unpatented mining claims on the selected lands total over 751 (FEIS 3.2.3.1; Fig. 3-12). BLM does not have discretionary approval on whether mining occurs as long as these activities do not result in undue and unnecessary degradation (FEIS 2.2). Without the Ray Plan Amendment and land exchange, mining uses are already supported in the Phoenix RMP for the White Canyon Resource Conservation Area. With or without the land exchange, the Arizona Desert Wilderness Act does not buffer the White Canyon Wilderness against mining on adjacent lands (3.2.4.7).

Analyzing the foreseeable use of lands exchanged is required under the BLM's land exchange regulations 43 CFR Part 2200 as well as under 40 CFR Part 1500. Recognizing that mining is the foreseeable use of the area, the FEIS analyzed, as actions common to all alternatives, mining uses projected to occur with regard to where areas of impact are expected and the kinds of disturbances (FEIS 2.2, Figs. 2-7, 2-8, 2-9). Table 2-7 and Chapter 4 provide complete analysis of projected impacts based on the assumption that mining will occur.

Issue 2: A Mine Plan of Operations is necessary to complete analysis of the land exchange impacts. BLM's assumption is wrong that the foreseeable use reflects mining that would take place whether or not land exchange occurs. Anticipated changes to the Mining Law or 43 CFR 3809 could result in a different set of mining plans. Due to lack of a mine plan, mining impacts are not analyzed for the Gila River watershed and natural resource along Mineral Creek, the White Canyon Wilderness, possible bighorn sheep introduction, and recreational trails. [EPA Region IX, the Sierra Club, and Bureau of Indian Affairs Phoenix Area]

Response: This issue has been addressed in the FEIS General Response section 7.4.5 and 7.4.6. Basically, until and unless the Mining Law and implementing regulations 43 CFR 3809 are changed, BLM must apply current regulations and policies to mining within the White Canyon Resource Conservation Area. Mining within the RCA is an approved use under the Phoenix RMP and analysis in the RMP EIS indicated that mineral development would continue or increase. See Issue 1 above and FEIS sections that deal with foreseeable uses in the absence of mining plans of operations.

Concerning mining impacts to Mineral Creek, the Army Corps of Engineers is the permitting agency charged with administering 404 permits for the Ray Mine. COE has addressed this issue in a recent Environmental Assessment and in September, 1999, issued a new 404 permit for mining in this area. Impacts from the land exchange itself are discussed in sections 4.2.1 and 4.2.2 of the FEIS with regard to water resources.

Issue 3: The FEIS relies on other federal and state agencies to protect resources and the BLM's analysis is therefore insufficient in discussing the impacts of mining activities. [Bureau of Indian Affairs Phoenix Area and Ken Fitch]

Response: The major environmental programs which regulate mining are the Clean Water Act, the Clean Air Act and the Aquifer Protection Program, all of which are beyond BLM's jurisdiction even when Mine Plans of Operations are approved by the BLM. Asarco must acquire or continue to operate under these permits even once the land becomes private. The FEIS details the law, regulations, orders and permits that regulate mining and mining reclamation (Table E-1). Approval of the land exchange does not require such permits and each agency determines the extent and kind of environmental analysis required to issue permits for mining.

Issue 4: Mitigation measures are insufficiently detailed or lacking, especially for biological resources which are listed including bighorn sheep habitat, ferruginous pygmy owl, southwestern willow flycatcher and the lesser long-nosed bat. Mitigation for archaeological sites automatically means site destruction. [EPA Region IX, the Sierra Club, and Ken Fitch]

Response: Mitigation takes many forms including avoidance, minimizing or delayed impacts, compensation and reclamation. In determining the parcels included in the land exchange, BLM built in compensation as a major form of mitigation. One driving value (public benefit) has been acquiring habitat for listed species or for special status species such as desert tortoise. The Ray Land Exchange includes as compensation (mitigation for the loss of selected lands) 7,144 acres of Category I desert tortoise habitat within the McCracken Mountains ACEC and other offered lands which provide habitat for the bald eagle, American peregrine falcon, cactus ferruginous pygmy owl and the southwestern willow flycatcher. Bighorn sheep is not a listed species, nor is it found in the area; nor has a transplant been approved. See below and USFWS Biological Opinion in Appendix B. See also USFWS letter regarding Section 7 & Biological Opinion on unoccupied ferruginous pygmy owl habitat on selected lands.

Mitigation for cultural resources has been developed by BLM working with the Arizona SHPO, the land exchange proponent and interested tribal groups. The cultural resources identified as significant (FEIS Appendix D) reflects archaeological inventory and tribal consultation in accordance with the requirements of the National Historic Preservation Act. Several field sessions and discussions on mitigation of archaeological properties has occurred and will continue until the cultural resource plan is completed. The site treatment process considers site protection, further recording of previously excavated sites, data recovery and tribal access.

Issue 5: The land exchange impacts bighorn sheep transplantation efforts and past land exchanges have "significantly and adversely impacted" bighorn sheep habitat. [EPA Region IX and Arizona Desert Bighorn Sheep Society]

Response: No bighorn sheep exist in the area, and no bighorn sheep transplantation has been approved for the area. Study results are not available, and no decision has been made by BLM and Arizona Game and Fish Department (AGFD) about sheep transplantation in the Middle Gila area. During the completion of the Phoenix RMP, the area was not identified for bighorn sheep habitat values or for transplantation. Use of the area for transplantation would require a plan amendment for BLM-administered lands. If and when such a planning effort occurs in the future, BLM, Asarco and AGFD have agreed to consider how movement corridors or improved habitat might be implemented (FEIS Table 4-21).

Cumulatively, land exchanges have actually increased the amount of bighorn sheep habitat managed on public lands, rather than reduced the overall amount in Arizona. Over the last decade, BLM exchanges have resulted in a total of 13,640 acres of additional bighorn sheep habitat. Acquisition occurred mainly in the Black Mountains resulting in acquiring: 9,320 acres considered high value, 3,840 medium and 480 acres low.

IMPLEMENTATION

Appraisal Process: Regulations at 43 CFR 2201.3 address appraisals for land exchanges, including reference to the Uniform Appraisal Standards for Federal Land Acquisition (UAS) (Department of Justice, 1992). These standards stem from years of eminent domain legal action and provide guidance for all federal appraisals. Additionally, state appraisal laws implementing the Uniform Standards of Professional Appraisal Practice apply to a certain extent. All appraisals for the Ray Land Exchange have been completed and reviewed by professional, state-certified appraisers, either BLM staff appraisers or private appraisers working under contract for BLM. Final appraised values have been approved by BLM. The value of the lands to be exchanged lands are equal.

The Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act and the pertinent regulations at 43 CFR 2200, require that the lands being exchanged be of equal value, meaning that the monetary value of the offered and selected lands must be equal. Any difference in monetary values, up to 25 percent of the value of the public lands leaving federal ownership (selected lands), must be equalized through a cash payment, except as provided for by 43 CFR 2201.1-1, 2201.5, and 2201.6, by the exchange. This ensures that the exchange is fair in terms of monetary value.

Assumption of Costs: The pertinent federal regulations at 43 CFR 2201.1-3 address the sharing of costs, between the exchange proponent and BLM, associated with the processing of a land exchange action. Amendments to the Federal Land Policy and Management Act of 1976 provide the authority to adjust the relative values of the lands involved to pay for certain types of expenses incurred in an exchange. The adjustment to relative values is limited to 25% of the value of the federal lands. The value of the selected federal lands will be adjusted 5% (approximately \$63,000) to compensate Asarco for the assumption of certain qualifying costs.

Minerals Withdrawals: Upon exchange approval, the BLM Tucson and Kingman Field Offices will petition to withdraw two parcels from mineral entry: the Gila River Cochran and Tomlin #4.

Grazing/Rights-of-Way: Grazing permittees and holders of Rights-of-Ways (ROW) were previously notified by certified letters of the exchange proposal. At the exchange completion, ROW holders will be notified that the existing ROW authorization remains in force but a new surface owner replaces BLM. Grazing permittees will be notified that adjustments may be required due to the reduction in the allotments. Permittees with authorized range improvements will be compensated by Asarco. For offered lands, Asarco will terminate any and all grazing leases; BLM will appropriately adjustment allotments within the offered lands boundaries.

Mining Claims: Asarco has three overlapping mining claims on the Chilito parcels with a third party claimant. Unless the disputed claims are settled prior to conveyance, these three claims will be excluded from the exchange. All mining claims on the selected parcels held by Asarco will be relinquished simultaneously with conveyance of exchange lands.


Hazardous Materials: A Level I Environmental Site Assessment will be conducted prior to the conveyance of the offered and selected lands in accordance with Section 120 (h) of SARA. It will be performed in compliance with the American Society of Testing Materials (ASTM) Practice E 1527. The Level I assessment will evaluate the potential for hazardous substance contamination and petroleum products through aerial inspection, ground reconnaissance, review of historical records, review of BLM databases related to past land uses and interviews with knowledgeable individuals.

None of the parcels are known to be located on or near a "Superfund" site under CERCLA. However, if such contaminants were located, the BLM and Asarco have agreed in the Agreement To Initiate (ATI) to enter into a binding agreement pursuant to 43 CFR 2201.7-2 which would commit Asarco to the removal or other remedial actions, if any were needed for such substances.

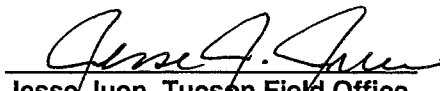
Water Rights: Surface water rights held by BLM on the selected federal lands will be assigned to Asarco, with the exception of BLM's federal reserved right claims which will be withdrawn from ADWR's records. All surface water rights and well permits on the offered private lands will be assigned to BLM. Please see Table 3-33 in FEIS for a complete list.

Arizona Trail planning and designation: Mitigation for the land exchange has been included should the trail be planned and constructed on a temporary or permanent basis within the exchange lands. Trail planning and designation is an independent action of the land exchange decision and may be implemented at any time.

Decision Approved by:


Tucson Field Manager
April 27, 2000

Responsible Officers for Implementation:


Jesse Juen, Tucson Field Office


John Christensen, Kingman Field Office

APPENDIX A

LEGAL DESCRIPTION OF SELECTED AND OFFERED LANDS

LEGAL DESCRIPTION OF SELECTED (FEDERAL) LANDS

Mineral Estate Only. Surface estate owned by the State of Arizona.

PARCEL CB-5 Township 3 South, Range 12 East G&S.R.B.&M.

<u>Section 24</u>	<u>Acres</u>	<u>Total Acres</u>
SE $\frac{1}{4}$	<u>160.00</u>	
		160.00

PARCEL RM-7 Township 2 South, Range 13 East G&S.R.B.&M.

<u>Section 35</u>	<u>Acres</u>	<u>Total Acres</u>
W $\frac{1}{2}$ NW $\frac{1}{4}$	<u>80.00</u>	
		80.00

PARCEL RM-8 Township 3 South, Range 13 East G&S.R.B.&M.

<u>Section 9</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	34.89	
lot 2	17.46	
E $\frac{1}{2}$ NE $\frac{1}{4}$	80.00	
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	
W $\frac{1}{2}$ SE $\frac{1}{4}$	<u>80.00</u>	
		252.35

<u>Section 10</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	51.10	
lot 2	37.97	
lot 4	21.06	
N $\frac{1}{2}$ NW $\frac{1}{4}$	80.00	
SW $\frac{1}{4}$ NW $\frac{1}{4}$	<u>40.00</u>	
		230.13

PARCEL RM-9

Township 3 South, Range 13 East G&S.R.B.&M.

<u>Section 11</u>	<u>Acres</u>	<u>Total Acres</u>
lot 3	<u>29.97</u>	
		29.97

PARCEL RM-11

Township 3 South, Range 14 East G&S.R.B.&M.

<u>Section 6</u>	<u>Acres</u>	<u>Total Acres</u>
lot 4	35.29	
lot 5	35.25	
lot 12	<u>17.60</u>	
		88.14

Township 2 South, Range 14 East G&S.R.B.&M.

<u>Section 31</u>	<u>Acres</u>	<u>Total Acres</u>
lot 3	35.42	
lot 4	<u>35.34</u>	
		70.76

PARCEL RM-14

Township 3 South, Range 13 East G&S.R.B.&M.

<u>Section 12</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	21.11	
lot 2	26.63	
lot 5	39.31	
lot 6	39.93	
lot 7 excluding patent Nos. 02-62-0014, 02-64-0243 and 02- 69-0016,	5.26	
SE ¼ excluding patent No. 02-64-0243	<u>96.51</u>	
		228.75

Township 3 South, Range 14 East G&S.R.B.&M.

<u>Section 7</u>	<u>Acres</u>	<u>Total Acres</u>
lot 2	22.73	
lot 3	35.19	
lot 4	35.21	
lot 8	28.28	
		121.41

PARCEL RM-15

Township 3 South, Range 14 East G&S.R.B.&M.

<u>Section 17</u>	<u>Acres</u>	<u>Total Acres</u>
lot 4	39.51	
SW $\frac{1}{4}$ SW $\frac{1}{4}$	<u>40.00</u>	
		79.51

<u>Section 18</u>	<u>Acres</u>	<u>Total Acres</u>
lot 5	32.66	
lot 6	31.90	
lot 7	39.99	
lot 8	19.92	
lot 9	42.10	
SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>40.00</u>	
		206.57

Mineral estate only. The surface estate owned by Asarco Inc.

PARCEL CB-4 Township 3 South, Range 13 East G&S.R.B.&M.

<u>Section 30</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	28.32	
lot 2	25.36	
lot 3	29.32	
lot 4	37.41	

<u>Section 30, continued</u>	<u>Acres</u>	<u>Total Acres</u>
lot 5	37.49	
lot 6	37.56	
E $\frac{1}{2}$ NE $\frac{1}{4}$	80.00	
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	
SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	
E $\frac{1}{2}$ SW $\frac{1}{4}$	80.00	
SE $\frac{1}{4}$	<u>160.00</u>	
		595.46

Mineral estate only. The surface estate owned by Asarco Santa Cruz Inc., (ASCI) owned by ASARCO Incorporated (ASARCO) and Freeport-McMoRan Inc., doing business as the Santa Cruz Joint Venture (SCJV).¹

PARCEL CG-1 Township 6 South, Range 4 East G&S.R.B.&M.

<u>Section 12</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	38.62	
lot 2	38.25	
W $\frac{1}{2}$ NE $\frac{1}{4}$	<u>80.00</u>	
		156.87

PARCEL CG-2 Township 6 South, Range 4 East G&S.R.B.&M.

<u>Section 23</u>	<u>Acres</u>	<u>Total Acres</u>
NW $\frac{1}{4}$	<u>160.00</u>	
		160.00

PARCEL CG-3 Township 6 South, Range 4 East G&S.R.B.&M.

<u>Section 24</u>	<u>Acres</u>	<u>Total Acres</u>
W $\frac{1}{2}$	<u>320.00</u>	
		320.00

TOTAL ACREAGE FOR MINERAL ESTATE

2,779.92

¹The Casa Grande Parcels (CG-1, CG-2 and CG-3) are designated for disposal in the Phoenix RMP, therefore, are not included in the Plan Amendment Decision.

<u>Section 30, continued</u>	<u>Acres</u>	<u>Total Acres</u>
lot 5	37.49	
lot 6	37.56	
E $\frac{1}{2}$ NE $\frac{1}{4}$	80.00	
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	
SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	
E $\frac{1}{2}$ SW $\frac{1}{4}$	80.00	
SE $\frac{1}{4}$	<u>160.00</u>	
		595.46

Mineral estate only. The surface estate owned by Asarco Santa Cruz Inc., (ASCI) owned by ASARCO Incorporated (ASARCO) and Freeport-McMoRan Inc., doing business as the Santa Cruz Joint Venture (SCJV).¹

PARCEL CG-1 Township 6 South, Range 4 East G&S.R.B.&M.

<u>Section 12</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	38.62	
lot 2	38.25	
W $\frac{1}{2}$ NE $\frac{1}{4}$	<u>80.00</u>	
		156.87

PARCEL CG-2 Township 6 South, Range 4 East G&S.R.B.&M.

<u>Section 23</u>	<u>Acres</u>	<u>Total Acres</u>
NW $\frac{1}{4}$	<u>160.00</u>	
		160.00

PARCEL CG-3 Township 6 South, Range 4 East G&S.R.B.&M.

<u>Section 24</u>	<u>Acres</u>	<u>Total Acres</u>
W $\frac{1}{2}$	<u>320.00</u>	
		320.00

TOTAL ACREAGE FOR MINERAL ESTATE

2,779.92

¹The Casa Grande Parcels (CG-1, CG-2 and CG-3) are designated for disposal in the Phoenix RMP, therefore, are not included in the Plan Amendment Decision.

Surface and Mineral Estate

PARCEL CB-1 Township 3 South, Range 12 East, G&S.R.B.&M.

<u>Section 25</u>	<u>Acres</u>	<u>Total Acres</u>
SW $\frac{1}{4}$	160.00	
E $\frac{1}{2}$	<u>320.00</u>	
		480.00
 <u>Section 26</u>	 <u>Acres</u>	 <u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

PARCEL CB-2 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 8</u>	<u>Acres</u>	<u>Total Acres</u>
S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	20.00	
SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	10.00	
E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	5.00	
SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	2.50	
S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	5.00	
SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>2.50</u>	
		45.00
 <u>Section 17</u>	 <u>Acres</u>	 <u>Total Acres</u>
E $\frac{1}{2}$	320.00	
SW $\frac{1}{4}$	160.00	
SE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	
S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{2}$ NW $\frac{1}{4}$	10.00	
N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$	5.00	
E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$	20.00	
SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$	10.00	

<u>Section 17, continued</u>	<u>Acres</u>	<u>Total Acres</u>
N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$	<u>5.00</u>	
		570.00

PARCEL CB-3 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 19</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	47.87	
lot 2	37.37	
lot 3	37.35	
lot 4	32.15	
lot 5	39.64	
lot 6	49.12	
lot 7	48.03	
lot 8	26.34	
lot 9	0.03	
lot 10	24.07	
NE $\frac{1}{4}$ NW $\frac{1}{4}$	40.00	
NE $\frac{1}{4}$ NE $\frac{1}{4}$	40.00	
E $\frac{1}{2}$ SE $\frac{1}{4}$	<u>80.00</u>	
		501.97

<u>Section 20</u>	<u>Acres</u>	<u>Total Acres</u>
W $\frac{1}{2}$ NW $\frac{1}{4}$	80.00	
W $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$	40.00	
NW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	
W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$	20.00	
W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$	<u>10.00</u>	
		190.00

PARCEL CH-1 Township 4 South, Range 15 East, G&S.R.B.&M.

<u>Section 22 & 27</u>	<u>Acres</u>	<u>Total Acres</u>
Tract 37	<u>262.72</u>	
		262.72

PARCEL CH-2 Township 4 South, Range 15 East, G&S.R.B.&M.

<u>Section 27</u>	<u>Acres</u>	<u>Total Acres</u>
Tract 39	<u>7.55</u>	
		7.55

PARCEL CH-3 Township 4 South, Range 15 East, G&S.R.B.&M.

<u>Section 27</u>	<u>Acres</u>	<u>Total Acres</u>
Tract 38	<u>1.91</u>	
		1.91

PARCEL CH-4 Township 5 South, Range 15 East, G&S.R.B.&M.

<u>Section 11</u>	<u>Acres</u>	<u>Total Acres</u>
N $\frac{1}{2}$ NE $\frac{1}{4}$	<u>80.00</u>	
		80.00

PARCEL CH-5 Township 5 South, Range 15 East, G&S.R.B.&M.

<u>Section 28</u>	<u>Acres</u>	<u>Total Acres</u>
S $\frac{1}{2}$	320.00	
NW $\frac{1}{4}$	<u>160.00</u>	
		480.00

PARCEL RM-1 Township 2 South, Range 13 East, G& S.R.B.& M.

<u>Section 34</u>	<u>Acres</u>	<u>Total Acres</u>
W $\frac{1}{2}$ NE $\frac{1}{4}$	80.00	
NW $\frac{1}{4}$	160.00	
N $\frac{1}{2}$ SW $\frac{1}{4}$	80.00	
SW $\frac{1}{4}$ SW $\frac{1}{4}$	40.00	
lot 2	32.96	
lot 3	28.09	
lot 4	1.62	
lot 8	<u>0.36</u>	
		423.03

PARCEL RM-2 Township 2 South, Range 13 East, G&S.R.B.&M.

<u>Section 34</u>	<u>Acres</u>	<u>Total Acres</u>
Lot 9	<u>5.23</u>	
		5.23

PARCEL RM-3 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 2</u>	<u>Acres</u>	<u>Total Acres</u>
lot 12	5.15	
		5.15

PARCEL RM-4 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 2</u>	<u>Acres</u>	<u>Total Acres</u>
lot 13	<u>2.06</u>	
		2.06

PARCEL RM-5 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 10</u>	<u>Acres</u>	<u>Total Acres</u>
lot 5	<u>0.02</u>	
		0.02

PARCEL RM-6 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 11</u>	<u>Acres</u>	<u>Total Acres</u>
lot 11	0.08	
lot 12	0.49	
lot 13	0.39	
lot 14	<u>0.02</u>	
		0.98

PARCEL RM-10 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 13</u>	<u>Acres</u>	<u>Total Acres</u>
lot 4	24.62	
lot 8	38.81	
lot 9	21.58	
lot 10	6.04	
lot 11	11.62	
lot 12	8.50	
lot 13	35.69	
lot 14	20.57	
SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>40.00</u>	
		207.43

Township 3 South, Range 14 East, G&S.R.B.&M.

<u>Section 18</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	35.20	
lot 2	35.10	
lot 10	33.38	
lot 11	34.84	
E½SW¼	80.00	
W½SE¼	<u>80.00</u>	
		378.52

<u>Section 19</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	34.86	
E½NW¼	80.00	
NE¼	<u>160.00</u>	
		274.86

PARCEL RM-12 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 1</u>	<u>Acres</u>	<u>Total Acres</u>
lot 3	39.73	
lot 4	39.61	
S½NW¼	<u>80.00</u>	
		159.34

PARCEL RM-13 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 1</u>	<u>Acres</u>	<u>Total Acres</u>
lot 5	34.59	
lot 6	37.87	
lot 7	6.50	
NW¼SE¼	<u>40.00</u>	
		118.90

PARCEL RM-14 Township 3 South, Range 14 East, G&S.R.B.&M.

<u>Section 7</u>	<u>Acres</u>	<u>Total Acres</u>
lot 11	<u>0.21</u>	
		0.21

PARCEL RM-16 Township 3 South, Range 14 East, G&S.R.B.&M.

<u>Section 20</u>	<u>Acres</u>	<u>Total Acres</u>
NW¼NW¼	<u>40.00</u>	
		40.00

PARCEL RM-17 Township 3 South, Range 13 East, G&S.R.B.&M.

<u>Section 22</u>	<u>Acres</u>	<u>Total Acres</u>
S½	<u>320.00</u>	
		320.00

<u>Section 23</u>	<u>Acres</u>	<u>Total Acres</u>
W½SW¼	<u>80.00</u>	
		80.00

<u>Section 26</u>	<u>Acres</u>	<u>Total Acres</u>
W½W½	<u>160.00</u>	
		160.00

<u>Section 27</u>	<u>Acres</u>	<u>Total Acres</u>
E½NW¼	80.00	
E½	<u>320.00</u>	
		400.00

<u>Section 34</u>	<u>Acres</u>	<u>Total Acres</u>
E½NE¼	80.00	
NW¼NE¼	<u>40.00</u>	
		120.00

<u>Section 35</u>	<u>Acres</u>	<u>Total Acres</u>
W $\frac{1}{2}$ NW $\frac{1}{4}$	80.00	
SW $\frac{1}{4}$	<u>160.00</u>	
		<u>240.00</u>

PARCEL RM-18 Township 3 South, Range 14 East, G&S.R.B.&M.

<u>Section 33</u>	<u>Acres</u>	<u>Total Acres</u>
NW $\frac{1}{4}$	160.00	
S $\frac{1}{2}$	<u>320.00</u>	
		480.00

<u>Section 34</u>	<u>Acres</u>	<u>Total Acres</u>
S $\frac{1}{2}$ SW $\frac{1}{4}$	<u>80.00</u>	
		80.00

Township 4 South., Range 14 East, G&S.R.B.&M.

<u>Section 3</u>	<u>Acres</u>	<u>Total Acres</u>
lot 3	30.74	
lot 4	30.51	
S $\frac{1}{2}$ NW $\frac{1}{4}$	80.00	
SW $\frac{1}{4}$	<u>160.00</u>	
		301.25

<u>Section 4</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	35.04	
lot 2	35.13	
lot 3	35.23	
lot 4	26.94	
lot 5	30.73	
lot 6	30.95	

lot 7	31.17	
S½NE¼	80.00	
SE¼NW¼	40.00	
E½SW¼	80.00	
SE¼	<u>160.00</u>	
		585.19

<u>Section 5</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	36.12	
lot 2	41.52	
lot 3	38.51	
lot 4	39.94	
lot 5	38.52	
lot 6	38.52	
lot 7	43.44	
lot 8	40.00	
lot 9	39.67	
lot 10	40.12	
lot 11	39.13	
lot 12	<u>39.67</u>	
		475.16

<u>Section 8</u>	<u>Acres</u>	<u>Total Acres</u>
E½NE1/3	<u>80.00</u>	
		80.00
TOTAL ACREAGE		8,196.48

TOTAL SELECTED ACREAGE

MINERAL ESTATE ONLY	2,779.92
SURFACE & SUBSURFACE	8,196.48
TOTAL	10,976.40

LEGAL DESCRIPTION OF OFFERED (PRIVATE) LANDS**KNISELY RANCH**

Township 25 North, Range 18 West, G&S.R.B.&M.

<u>Section 4</u>	<u>Acres</u>	<u>Total Acres</u>
SW $\frac{1}{4}$ NW $\frac{1}{4}$	<u>40.00</u>	
		40.00

<u>Section 17</u> (surface estate only)	<u>Acres</u>	<u>Total Acres</u>
E $\frac{1}{2}$ NE $\frac{1}{4}$	<u>80.00</u>	
		80.00

<u>Section 20</u>	<u>Acres</u>	<u>Total Acres</u>
SE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>40.00</u>	
		40.00

GILA RIVER PARCEL AT COCHRAN

Township 4 South, Range 12 East, G&S.R.B.&M.

<u>Section 6</u>	<u>Acres</u>	<u>Total Acres</u>
S $\frac{1}{2}$ SE $\frac{1}{4}$		
N $\frac{1}{2}$ SE $\frac{1}{4}$ (surface estate only)	<u>160.00</u>	
		160.00

<u>Section 7</u>	<u>Acres</u>	<u>Total Acres</u>
NE $\frac{1}{4}$	<u>160.00</u>	
		160.00

SACRAMENTO VALLEY PARCEL

Township 19 North, Range 19 West, G&S.R.B.&M.

<u>Section 23</u> (surface estate only)	<u>Acres</u>	<u>Total Acres</u>
W $\frac{1}{2}$ SE $\frac{1}{4}$	80.00	
NE $\frac{1}{4}$ SE $\frac{1}{4}$	<u>40.00</u>	
		120.00

MCCRACKEN MOUNTAIN PARCELS

Township 14 North, Range 14 West, G&S.R.B.&M.

<u>Section 19</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	37.93	
lot 2	38.05	
lot 3	38.15	
lot 4	38.27	
E $\frac{1}{2}$ W $\frac{1}{2}$	160.00	
E $\frac{1}{2}$	<u>320.00</u>	
		632.40

<u>Section 31</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	38.27	
lot 2	38.43	
lot 3	38.57	
lot 4	38.73	
E $\frac{1}{2}$ W $\frac{1}{2}$	160.00	
E $\frac{1}{2}$	<u>320.00</u>	
		634.00

Township 14 North, Range 15 West, G&S.R.B.&M.

<u>Section 3</u>	<u>Acres</u>	<u>Total Acres</u>
lot 1	39.35	
lot 2	39.40	
lot 3	39.46	
lot 4	39.51	
S½N½	160.00	
S½	<u>320.00</u>	
		637.72

<u>Section 9</u>	<u>Acres</u>	<u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

<u>Section 11</u>	<u>Acres</u>	<u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

<u>Section 15</u>	<u>Acres</u>	<u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

<u>Section 23</u>	<u>Acres</u>	<u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

<u>Section 25</u>	<u>Acres</u>	<u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

<u>Section 27</u>	<u>Acres</u>	<u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

<u>Section 35</u>	<u>Acres</u>	<u>Total Acres</u>
ALL	<u>640.00</u>	
		640.00

TOMLIN PARCELS

Township 15 North, Range 13 West, G&S.R.B.&M.

<u>Section 19</u>	<u>Acres</u>	<u>Total Acres</u>
lot 3	36.85	
lot 4	36.95	
E½SW¼	<u>80.00</u>	
		153.80

<u>Section 35</u>	<u>Acres</u>	<u>Total Acres</u>
SW¼SW¼	40.00	
N½SE¼	80.00	
SE¼SE¼	<u>40.00</u>	
		160.00

TOTAL OFFERED LANDS

7,297.92

APPENDIX B

USFWS BIOLOGICAL OPINION (EXCERPTS)



United States Department of the Interior

U.S. Fish and Wildlife Service

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Received

MAR 16 2000

Tucson Field Office

In Reply Refer To:

AESO/SE

2-21-95-F-156

March 15, 2000

Memorandum

To: Field Manager, Tucson Field Office, Bureau of Land Management, Tucson, AZ

From: Field Supervisor

Subject: Biological Opinion for the Proposed Ray Land Exchange/Plan Amendment.

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed Ray Land Exchange / Plan Amendment in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.). Formal consultation was initiated by the Bureau of Land Management (BLM) on June 28, 1999. The BLM determined the proposed action may affect and is likely to adversely affect the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) and that it may affect but is not likely to adversely affect the southwestern willow flycatcher (*Empidonax traillii extimus*), bald eagle (*Haliaeetus leucocephalus*), and lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*).

This biological opinion is based on information provided in the biological assessment (BA) (BLM and SWCA 1999), final environmental impact statement (EIS) (BLM 1999), literature reviews, project meetings, information contained in our files, and various correspondence between our agencies. Literature cited is not a complete bibliography of all literature available on the project nor subject species. A complete administrative record of this consultation is on file at this office.

The Service concurs that the Ray Land Exchange / Plan Amendment is not likely to adversely affect the southwestern willow flycatcher, bald eagle, and lesser long-nosed bat. Rationale for our concurrences is described in the CONCURRENCES section.

It is the Service's biological opinion that the Ray Land Exchange / Plan Amendment is not likely to jeopardize the continued existence of the cactus ferruginous pygmy-owl or result in destruction or adverse modification of critical habitat.

surface disturbance resulting from such mining activity cannot be projected. Approximately 1,733 acres (16%) of the selected lands fall into this category.

Offered lands: In exchange, the BLM's Tucson and Kingman Field Offices would acquire lands totaling approximately 7,300 acres including: lands with riparian habitat; lands within watersheds of important riparian areas; lands with high value wildlife habitat; lands for administrative sites, developed recreation sites, or that provide access to public lands; lands with significant cultural and paleontological properties; and inholdings within special management areas. The offered lands consist of parcels owned by Asarco, which are located in Pinal and Mohave counties (Figure 2 in BLM and SWCA 1999). These include parcels along: the Gila and Big Sandy rivers, the Black Mountains, McCracken Mountains and Cerbat Mountains. Asarco is offering two separate parcels and three parcel groups (the offered lands, 2 individual parcels and three parcel groups) that it owns. These private parcels are located in Pinal and Mohave county and include the following: 1) the Gila River Parcel at Cochran (Pinal County) contains a segment of the Gila River Riparian Management Area and is within the Middle Gila Cultural Resource Management Area; 2) the Sacramento Valley Parcel abuts the Warm Springs Wilderness in Mohave County; 3) the Knisely Ranch parcel group lies within the Mount Tipton Wilderness in Mohave County, 4) the Tomlin Parcel group lies adjacent to the Big Sandy River, located within the Big Sandy Herd Management Area; and 5) the McCracken Mountains Parcel group occurs within the McCracken Desert Tortoise Habitat Area of Critical Environmental Concern. For a detailed description of the offered lands, refer to BLM (1999).

SCOPE OF ANALYSIS

We contend that Asarco's foreseeable land uses on the selected lands would be attributable to the proposed land exchange and should be evaluated as effects of the proposed action. However, future BLM management activities conducted on the offered lands, that may potentially affect critical habitat for the cactus ferruginous pygmy-owl, would be subject to the ongoing consultation reinitiations for the Phoenix RMP (2-21-88-F-167) and the Eastern Arizona Grazing EIS (2-21-96-F-422). Therefore, the effects of future Asarco mining activity on the selected lands are evaluated herein while the effects of future BLM management actions on the offered lands are not, as they will be covered under the above referenced reinitiations.

Based on information contained in our files, Asarco's proposed Ray Mine Water Quality Improvements and Rock Deposition Area Expansion (also referred to as the Consent Decree Work Plan Project) would utilize portions of the selected lands. Specifically RM-2, RM-3, and RM-7 appear to be located within areas proposed for a diversion tunnel and valley fill rock deposition area (RDA) along Mineral Creek. In our view the proposed Ray Land Exchange / Plan Amendment and Ray Mine Water Quality Improvements and Rock Deposition Area Expansion are interdependent and interrelated actions because the diversion tunnel and RDA could not be constructed but for the acquisition of BLM property. However, based on the amount of area subject to jurisdiction under section 404 of the Clean Water Act, it seems that the

U.S. Army Corps of Engineers (Corps) has a greater amount of discretionary authority over the proposed future diversion tunnel and RDA than does BLM. Therefore, the effects associated with the proposed Ray Mine Water Quality Improvements and Rock Deposition Area Expansion are the result of a future separate Federal action, specifically permitting by the Corps under section 404, and are outside the scope of this consultation.

Based on information contained in our files, water discharged from mining operations at the Ray Mine has been, and continues to be, in exceedance of water quality standards. In our view these discharges are not interdependent nor interrelated to the Ray Land Exchange / Plan Amendment as they could continue or cease irrespective of the acquisition of BLM property. Therefore, the effects of water discharged in exceedance of standards are better addressed by the Environmental Protection Agency under their National Pollution Discharge Elimination System permitting program and are outside the scope of this consultation.

BIOLOGICAL OPINION FOR CACTUS FERRUGINOUS PYGMY-OWL

Status of the species

The Service listed the Arizona population of the cactus ferruginous pygmy-owl on March 10, 1997; the listing was effective on April 9, 1997. The cactus ferruginous pygmy-owl is a small bird, averaging 17 cm (6.75 in) in length. The average weight of a male is 62 g (2.2 oz), while females average 73 g (2.6 oz). Cactus ferruginous pygmy-owls are reddish-brown overall, with a cream-colored belly streaked with reddish-brown. Their crown is lightly streaked, and paired black-and-white spots on the nape suggest eyes. They have no ear tufts and their eye color is yellow. Their tail is reddish-brown with darker stripes, and is relatively long for an owl.

Species distribution

According to early surveys referenced in the literature the cactus ferruginous pygmy-owl, prior to the mid-1900s, was "not uncommon," "of common occurrence," and a "fairly numerous" resident of lowland central and southern Arizona in cottonwood forests, mesquite-cottonwood woodlands, and mesquite bosques along the Gila, Salt, Verde, San Pedro, and Santa Cruz rivers and various tributaries (Breninger 1898 *in* Bent 1938, Gilman 1909, Swarth 1914). Bendire (1888) noted that he had taken "several" along Rillito Creek near Fort Lowell, in the vicinity of present-day Tucson, Arizona. Records indicate that the cactus ferruginous pygmy-owls were initially more common in xeroriparian habitats (very dense thickets bordering dry desert washes) than more open, desert uplands (Monson and Phillips 1981, Johnson and Haight 1985a, Johnson-Duncan et al. 1988, Millsap and Johnson 1988, Davis and Russell 1990). The cactus ferruginous pygmy-owl was also noted to occur at isolated desert oases supporting small pockets of riparian and xeroriparian vegetation (Howell 1916, Phillips et al. 1964).

owls forage over larger areas during the winter in order to access a suitable forage base (Proudfoot 1996).

Critical Habitat

On December 30, 1998, the Service proposed approximately 290,000 ha (725,500 ac) of critical habitat in southern and central Arizona (63 FR 71820). Areas with most of the recent cactus ferruginous pygmy-owl occurrences and areas believed to be important to genetic and demographic interchange were identified and proposed as critical habitat. The Service published a final rule (64 FR 37419) on July 12, 1999 which designated approximately 296,115 ha (731,712 ac) of riverine riparian and upland habitat in Pima, Cochise, Pinal, and Maricopa counties in Arizona effective August 11, 1999.

Environmental baseline

Surveys and habitat assessments were conducted on the selected land parcels in March of 1998 (BLM and SWCA 1999). No owls were detected and no critical habitat occurs on any of the selected lands parcels. However, BLM believes that 6,646 acres of selected lands should be considered unoccupied potential habitat for the species. Additionally, 320 acres of critical habitat are located on the offered lands. The following consultations have occurred in or near the action area.

1. Phoenix Resource Management Plan (Consultation 2-21-88-F-167). The biological opinion issued by the Service concluded "no jeopardy" for this species. Conservation measures for this species included: pygmy-owl habitat descriptions, mapping, habitat management and surveys.
2. Phoenix District Portion of the Eastern Arizona Grazing Environmental Impact Statement (Consultation 2-21-96-F-422). The biological opinion issued by the Service concluded "no jeopardy" for this species. Conservation measures for this species included: habitat descriptions, mapping, habitat management and surveys.
3. Upper Gila River-San Simon Grazing EIS (2-21-96-F-423). The biological opinion issued by the Service concluded "no jeopardy" for this species. Conservation measures applied to the biological opinion for this species included mapping, habitat descriptions, surveys and habitat management.

Effects of the action

The proposed action would change an administrative planning decision (land tenure in the RMP) and would transfer ownership and authority for lands between BLM and Asarco. The proposed action would remove Federal control and responsibility on 6,646 acres of suitable habitat for the

pygmy-owl on the selected lands, and the foreseeable mining uses would likely result in the destruction of portions of unoccupied potential habitat for the pygmy-owl.

Construction of open pits, haul roads, solution-extraction rock deposition areas, overburden deposition areas, raveling areas, leach rock deposition areas, access roads, stormwater diversion ditches, rights-of-way, and administrative facilities would result in clearing of vegetation, grading of topography, introduction of hazardous materials, and increased traffic and noise. Plants which are potentially suitable for nesting, such as saguaro or mesquite, would be permanently removed from these areas resulting in the loss of dispersion opportunities for the pygmy owl. Plants and other habitat features which support populations of prey species, such as small mammals, would be removed resulting in the loss of foraging opportunities for the pygmy owl. In a worst case scenario, all 6,646 acres of potential pygmy owl habitat could be permanently lost to mining activities. Because these lands are unoccupied, no direct effects to pygmy-owls are expected to occur. No critical habitat occurs on the selected lands. The proposed action will bring 320 acres of suitable habitat on offered lands into Federal ownership and management.

Cumulative effects

Cumulative effects are those adverse effects of future non-Federal (State, local government, and private) actions that are reasonably certain to occur in or near the project area. Future Federal actions would be subject to the consultation requirements established in section 7 of the ESA and, therefore, are not considered cumulative to the proposed project. Effects of past Federal and private actions are considered in the Environmental Baseline.

Asarco is currently in negotiations with the State to purchase approximately 1,110 acres near the Ray and Copper Butte/Buckeye mining complexes. Acquisition of this acreage and implementation of the foreseeable mining uses would eliminate additional areas described by BLM as potential habitat for the owl.

Conclusion

After reviewing the current status of the species, environmental baseline for the action area, effects of the land exchange, and cumulative effects, it is the Service's biological opinion that the Ray Land Exchange / Plan Amendment, as proposed, is not likely to jeopardize the continued existence of the cactus ferruginous pygmy owl. Critical habitat for this species is not located on the selected lands, therefore none will be affected by the foreseeable mining uses.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species without special exemption. Take is defined as to harass,

harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Harass is defined in the same regulation by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take of a listed animal species that is incidental to, and not the purpose of, the carrying out an otherwise lawful activity conducted by the Federal agency or the applicant. Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement. The Service does not anticipate incidental take of the cactus ferruginous pygmy-owl.

Survey data provided by BLM did not document the presence of the cactus ferruginous pygmy-owl on the selected lands to be traded to Asarco. If a cactus ferruginous pygmy-owl is located on or nearby the selected lands before completion of the land exchange, and that owl may be adversely affected by the proposed action, then reinitiation of consultation is warranted [50 CFR 402.16(b)].

CONCURRENCES

The BLM has requested our concurrence that the proposed Ray Land Exchange / Plan Amendment may affect, but is not likely to adversely affect the southwestern willow flycatcher, bald eagle, and lesser long-nosed bat. For a more complete description of the proposed action, as well as maps and illustrations of the various land parcels, please refer to BLM (1999) and BLM and SWCA (1999).

Southwestern willow flycatcher

Environmental baseline: No southwestern willow flycatchers were detected during surveys conducted along Mineral Creek at the Ray Complex in 1998 (BLM and SWCA 1999). No other selected lands parcels were surveyed for willow flycatcher as suitable habitat was not determined to be present. The selected lands are not within any area designated as critical habitat for this species.

Small areas of Sonoran riparian deciduous forest vegetation occur on several parcels in the Ray Complex. Dominant species include Goodding willow, Fremont cottonwood, and seep willow. Approximately 11.7 acres of this habitat type is found along Mineral Creek on Parcel RM-7. Along the creek, willow and cottonwood patches occur as narrow stringers no wider than about 15-20 feet. Foliage volumes and stem densities are low and understory vegetation is sparse. Approximately 0.5 acre of Sonoran riparian deciduous forest vegetation is found along a

perennial spring on Parcel RM-18. In total, Sonoran riparian deciduous forest vegetation covers approximately 13 acres of the selected lands in the Ray Complex area.

Less than one acre of remnant Sonoran riparian deciduous forest vegetation occurs on Parcel CB-4 in the Copper Butte/Buckeye Complex. Walnut Creek, a perennial stream dominated by tamarisk, mesquite, Goodding willow, and Fremont cottonwood, is near the action area but occurs outside of the selected Parcel CB-1. An approximately one quarter mile section of wash located near the center of Parcel CB-4 is currently dominated by Fremont cottonwood, Goodding willow and seep willow, but doesn't have perennial water. SWCA determined the Walnut Creek area was not suitable flycatcher nesting habitat as the patch size was too small, habitat was of poor quality, and the patch was at least 2.5 km from the nearest patch of potentially suitable flycatcher habitat along the Gila River. The plant community along Walnut Creek appears to be poor habitat because canopy height throughout the patch is highly variable and mean canopy height is at the lower end of the range known to be used, mesquite is co-dominant throughout the patch, and the patch as a whole is uneven-aged and structurally heterogeneous.

Approximately 3.4 acres of Sonoran riparian deciduous forest vegetation occurs in the central portion of CH-1, which BLM does not consider suitable flycatcher nesting habitat. A seep in the central portion of Section 22 supports a small group of soapberry, and a spring-fed drainage with a series of bedrock pools in the south-central portion of Section 22 supports scattered tamarisk, Fremont cottonwood and Goodding willow in addition to xeroriparian mixed scrub vegetation. The only riparian plant community within the Casa Grande area is xeroriparian mixed grass.

Effects of the action: BLM has determined that no parcels in the proposed land exchange, other than parcel RM-7 along Mineral Creek, have the potential to develop into suitable habitat for the southwestern willow flycatcher. BLM has further determined that based on their review of the environmental assessment prepared by the Corps (1999), parcel RM-7 is proposed to be converted into a wetland for mitigation purposes and will therefore not be mined. BLM would acquire 320 acres of riparian habitat known to be occupied by the southwestern willow flycatcher on the Gila River Parcel at Cochran in Pinal County.

Cumulative effects: Cumulative effects are those adverse effects of future non-Federal (State, local government, and private) actions that are reasonably certain to occur in or near the project area. Future Federal actions would be subject to the consultation requirements established in section 7 of the ESA and, therefore, are not considered cumulative to the proposed project. Effects of past Federal and private actions are considered in the Environmental Baseline.

Asarco is currently in negotiations with the State to purchase approximately 1,110 acres near the Ray and Copper Butte/Buckeye mining complexes. Acquisition of this acreage and implementation of the foreseeable mining uses would not affect the southwestern willow flycatcher as suitable habitat is not present on these lands (BLM and SWCA 1999).

Of concern to the Service is the implementation of the proposed Ray Mine Water Quality Improvements and Rock Deposition Area Expansion which would eliminate significant amounts of wetland and riparian vegetation along Mineral Creek (outside of the selected lands), portions of which meet the suitability criteria for southwestern willow flycatcher. However, as stated above in the SCOPE OF ANALYSIS, it is our view that the effects of this activity is the result of a separate Federal action, and therefore should not be considered cumulative.

Conclusion: In our draft biological opinion we concurred that, based on the available information, the proposed Ray Land Exchange / Plan Amendment is not likely to adversely affect the southwestern willow flycatcher provided that surveys for the species are conducted within suitable habitats on selected lands prior to land clearing activities. Our reasoning behind the survey condition was based on our concern that the temporal lag between execution of the land exchange and the initiation of mining activity may be sufficient to allow for dispersion or range expansion of the species onto the selected lands. As described above in the CONSULTATION HISTORY, on February 16, 2000, the BLM submitted a memorandum requesting that the conditional concurrence on southwestern willow flycatcher be removed and that we concur with a determination of "may affect, not likely to adversely affect." Based on amendments to the BA provided by BLM indicating that no suitable habitat will be disturbed by mining activities conducted on the selected lands, we concur that the Ray Land Exchange / Plan Amendment, as currently described, is not likely to adversely affect the southwestern willow flycatcher.

Bald eagle

Environmental baseline: Surveys were not conducted for bald eagles on either the selected or offered lands parcels. Bald eagles are known to occur along the Gila River and have been observed in the vicinity of the Gila River Parcel at Cochran and Tomlin #4 parcel. Although no observations of bald eagles have been recorded for any of the selected parcels or on any of the other offered lands parcels, these parcels may be visited by wintering or nesting bald eagles during foraging or transient activities. Critical habitat has not been designated for the bald eagle.

The Ray Complex parcels lack large riverine, lake or reservoir habitats which would provide foraging areas for bald eagles and also lack suitable nesting substrates (large trees, snags, or cliffs). The closest known nest site (unsuccessful) is near the confluence of the San Pedro and Gila Rivers nears Winkelman. Eagles may occasionally visit the project area when foraging along the Gila River.

Two very small borrow pits containing water are located on Parcel RM-3. No emergent wetland species were observed at either of these artificial ponds. Although the reservoir on Parcel RM-7 supports an approximately seven-acre patch of mixed broadleaf vegetation at its north end, the vegetation around the remainder of the reservoir includes approximately 47 acres, including open water, which is composed of the same species as those occurring around stock tanks in the Copper Butte/Buckeye area. These reservoirs may hold water for extended periods but do not

support fish, however bald eagles may occasionally visit the ponds when searching for prey in the area.

The Copper Butte/Buckeye parcels lack large riverine, lake or reservoir habitats which would provide foraging areas for bald eagles and also lack suitable nesting substrates (large trees, snags, or cliffs) with the exception of a few cliffs in Parcels CB-1 and CB-5. Cliffs which might provide suitable nesting substrates for bald eagle and are within 13 miles of the Gila River occur in greater abundance in Walnut Canyon and other others near the selected lands. Stock tanks are located on Parcels CB-1, CB-2, and CB-3 and are sparsely vegetated, predominantly with mesquite, desert broom, and seep willow; however, the margins of the stock tank on Parcel CB-3 are heavily vegetated in places with these three species and with blue palo verde. In total, artificial ponds in this area cover approximately 3.6 acres of the selected lands in the Copper Butte/Buckeye area. These reservoirs may hold water for extended periods but do not support fish. Bald eagles may occasionally visit the ponds when searching for prey in the area. The parcels in the Chilito/Hayden and Casa Grande area do not provide suitable habitat for the bald eagle as they lack large riverine, lake or reservoir habitats which provide prey species and nesting substrates. A bald eagle nest site near Winkelman is approximately 1.5 miles from parcel CH-5 and 2.5 miles from parcel CH-4.

Effects of the action: The proposed land exchange is not anticipated to result in direct effects to the bald eagle or its habitat on the selected lands, as the selected lands lack large riverine, lake or reservoir habitats which provide prey species and nesting substrates and few potentially suitable cliff habitats are available. Implementation of the foreseeable uses is not expected to affect the bald eagle or its habitat as no bald eagles are nesting on the selected lands. The proposed land exchange would bring the 320-acre Gila River Parcel at Cochran into Federal ownership and management, which provides suitable foraging habitat for bald eagle (approximately 1.1 miles of riverine habitat) along the Gila River and the Tomlin # 4 parcel which also provides potential foraging habitat.

Cumulative effects: Asarco is currently in negotiations with the State to purchase approximately 1,110 acres near the Ray and Copper Butte/Buckeye mining complexes. Acquisition of this acreage and implementation of the foreseeable mining uses would not affect the bald eagle as the species is not known to frequent these areas.

Of concern to the Service are the impacts of regional mining operations on water quality in the Gila River and potential effects to listed species, especially bald eagles. However, as stated above in the SCOPE OF ANALYSIS, it is our view that the effects of this activity are the result of a separate Federal action, and therefore should not be considered cumulative.

Conclusion: Based on the available information, we concur that the proposed Ray Land Exchange / Plan Amendment is not likely to adversely affect the bald eagle.

Lesser long-nosed bat

Environmental baseline: No lesser long-nosed bats or evidence of their occurrence (e.g. droppings) were noted on the selected lands in the Ray Complex during inspections of 40 mine adits and natural caves or during mist net surveys conducted at the Ray Complex from 1993 to 1998 (BLM and SWCA 1999). Vegetation on the selected lands include both saguaros and agaves; however, most of these lands are at the northern edge of the transient use area for this species and greater than 50 miles from any known roost. Critical habitat for this species has not been designated.

No lesser long-nosed bats or evidence of their occurrence (e.g. droppings) were noted on the selected lands in the Copper Butte/Buckeye area during inspections of 9 mine adits and natural caves from 1993 to 1998. No recorded roosts for lesser long-nosed bats are within 50 miles of this area. No lesser long-nosed bats or evidence of their occurrence (e.g. droppings) were noted on the selected lands in the Chilito/Hayden area during inspections of 8 mine adits and natural caves from 1993 to 1998. The Casa Grande selected lands do not provide suitable habitat for this species as there is no vegetation for foraging and no abandoned buildings or natural features to provide roosting habitat. The Casa Grande parcels are however, within 50 miles of a lesser long-nosed bat roost.

Effects of the action: The proposed land exchange would result in Asarco acquiring 57 mine adits, none of which contained lesser long-nosed bats during surveys from 1993 to 1998 and all of which are north of the current range of the species. Implementation of the foreseeable uses would likely eliminate 57 mine adits on the selected lands, which could provide potential roost habitat for the species if it were to expand its range. Similarly, upland habitats including both saguaro and agave would be eliminated by the foreseeable uses which could provide foraging habitat if a range expansion occurred for the species. However, extensive acreage of both saguaro and agave foraging habitats are available in the vicinity of currently known roosts for the species. The proposed land exchange would result in BLM acquiring the offered lands, none of which contain habitat for the lesser long-nosed bat with the possible exception of the Gila River Parcel at Cochran.

Cumulative effects: Asarco is currently in negotiations with the State to purchase approximately 1,110 acres near the Ray and Copper Butte/Buckeye mining complexes. Acquisition of this acreage and implementation of the foreseeable mining uses would not affect the lesser long-nosed bat as these lands are outside of the species' range.

Conclusion: In our draft biological opinion we concurred that, based on the available information, the proposed Ray Land Exchange / Plan Amendment is not likely to adversely affect the lesser long-nosed bat provided that surveys for the species are conducted prior to construction activities that would eliminate mine adits. Our reasoning behind the survey condition was based on our concern that the temporal lag between execution of the land exchange and the initiation of mining activity may be sufficient to allow for dispersion or range

expansion of the species into the selected lands. As described above in the CONSULTATION HISTORY, on February 16, 2000, the BLM submitted a memorandum requesting that the conditional concurrence on lesser long-nosed bat be removed and that we concur with a determination of "may affect, not likely to adversely affect." Based on further review of the current known range of the species, proximity of selected lands to range limits, and discussion with BLM staff, we agree that the potential for dispersion or range expansion onto selected lands by the lesser long-nosed bat is insignificant and discountable. We therefore concur that the Ray Land Exchange / Plan Amendment, as currently described, is not likely to adversely affect the lesser long-nosed bat.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefits of threatened and endangered species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. We offer the following conservation recommendations.

- 1) We recommend that BLM conduct annual surveys for the cactus ferruginous pygmy-owl until the land trade is completed in the event owls move into the area. Surveys should follow the protocol accepted by the Service at the time, currently AGFD and Service (2000). In the event that owls are detected, section 7 consultation should be reinitiated.
- 2) We recommend BLM encourage Asarco to conduct annual surveys for the cactus ferruginous pygmy-owl after the land exchange is completed until commencement of construction activities to reduce the possibility of unauthorized incidental take that may occur in the event owls move into the area. Surveys should follow the protocol accepted by the Service at the time, currently AGFD and Service (2000). In the event that owls are detected, Asarco should work with the Service on development of a habitat conservation plan.
- 3) We recommend that BLM encourage Asarco to conduct annual surveys for the southwestern willow flycatcher within suitable habitats along Mineral Creek until the commencement of dewatering and vegetation clearing associated with construction of the proposed diversion tunnel and valley fill RDA. Surveys should follow the protocol accepted by the Service at the time, currently Sogge *et al* (1997). In the event that flycatchers are detected, efforts should be made to avoid unauthorized incidental take.
- 4) We recommend that BLM participate in open pro-active discussions with resource agencies, including the Service, and other interested entities to assess and remedy water quality degradation along the Gila River and tributaries. Of particular concern are potential effects to

bald eagle, southwestern willow flycatcher, and proposed critical habitat for the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*), as well as general fish and wildlife resources.

5) BLM should conduct, or at minimum allow, biological surveys and specimen collections of the aquatic invertebrate community of the perennial springs located on parcel RM-18 and CH-1 prior to execution of the land exchange. Natural springs and seeps within the southwest are known for their propensity to harbor endemic aquatic invertebrates such as springsnails, beetles, caddisflies, and amphipods. Such surveys and collections would aid in the documentation of regional biological diversity and geographic endemism, demonstrate sound environmental policy, and be consistent with the National Memorandum of Understanding Concerning The Conservation Of Springsnails In The Great Basin entered into by both the BLM and the Service on November 6, 1998.

In order to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, we request notification of the implementation of any conservation recommendation.

REINITIATION NOTICE

This concludes formal consultation for cactus ferruginous pygmy-owl and informal consultation for southwestern willow flycatcher, bald eagle, and lesser long-nosed bat for the Ray Land Exchange / Plan Amendment. As provided in 50 CFR Part 402.16, where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law), reinitiation of consultation is required if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; 3) the action is subsequently modified in a manner that causes an effect to listed species or critical habitat in a manner not considered in this opinion; or 4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

In future communication regarding this consultation, please refer to consultation number 2-21-95-F-156. If we may be of further assistance, please contact Mike Martinez at (602) 640-2720 or Sherry Barrett at (520) 670-4617.



David L. Harlow